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## REPORTS



# NOTES OF THE WEEK

### Jurisdiction of Quarter Sessions

An important provision in the Criminal Justice Administration Act, 1956 (which received the Royal Assent on March 28), is contained in s. 12, by which the recorder, deputy recorder or assistant recorder of any borough having a separate court of quarter sessions shall be deemed to be a legally qualified chairman for the purposes of s. 2 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, so that the court has the extended jurisdiction mentioned in s. 2. This is now irrespective of population of the borough, and the words " having a population of not less the 50,000," contained in subs. 2 and 3 of s. 2 are repealed.

### Everyone Presumed to Know the Law

Those whose duty it is to enforce or to administer the law naturally take special steps to ensure that they become aware of new laws and of changes in existing laws. But it must be much more difficult for many other people. We have called attention in this journal to the change in the law which was made recently by which dual-purposes vehicles were included as passenger vehicles for the purposes of the first schedule to the Road Traffic Act, 1930. This had the effect that some goods vehicles which previously had been held not to be subject to a speed limit outside built-up areas when they were not carrying goods became subject to such a limit. We read a report in a Brighton newspaper of the conviction of a number of goods vehicle drivers for exceeding the speed limit when they were driving " empty " and one of them is reported as saying to the patrol officer who stopped him " I'm all right, I'm empty," and when the position was explained he added " Oh, I see, I was definitely of the opinion that I was de-restricted with an unladen van."

We have some sympathy with such a driver in the early days after a change of this kind takes place, and we wonder whether any steps which are not at present taken could be taken to bring such changes prominently to the notice of those directly affected by them. It may be that adequate publicity is already given by the national press and by trades' union journals, and that some of those affected are too heedless to pay attention to such warnings. This is a matter on which we have no information, but we make our suggestion for what it is worth.

### Magistrates and Policy

For some decades persons aggrieved by decisions of a local authority have had a right of appeal to the magistrates' court, though there are still many instances where such an appeal is directly to quarter sessions, under s. 7 of the Public Health Acts Amendment Act, 1890. These appeals are not primarily on points of law, and the question arises how far the magistrates are entitled to give effect to their own ideas of policy. A good illustration occurs in regard to parking places. Where a local authority makes an order under s. 68 of the Public Health Act, 1925, and somebody appeals, are the magistrates confined to determining whether the appellant will be injured ? Even if that is all they can decide, what happens if they answer yes ? Can they go on to consider w ether his misfortune must be borne, because of the public benefit ? If so, can they weigh this benefit ?

In principle it can be assumed that the magistrates are not entitled to substitute their opinion about policy for that of the local authority, which is responsible to the electorate. The evident intention of Parliament in giving the right of appeal was to protect a private person who could show that his interests would be damaged. We think, however, that magistrates might find it difficult in all cases to exclude argument and evidence about alternative sites, and about the necessity for the council's proposals. A shop-keeper alleges that a street parking place in South Street will prevent access to his shop; he may go on to say that in West Street there is a blank wall, against which cars could be parked without interference with anybody. Similarly, four householders allege that a parking place on vacant land belonging to the council behind their houses will involve nuisance to their houses; they may go on to say that the council own other vacant land elsewhere in the town which could be used. These statements, if true, must have a bearing upon reasonableness, which is one of

the things the magistrates have to decide, and cannot in our opinion be regarded as irrelevant to the issue. Suppose then that the council call police evidence to say that West Street is too narrow for parking, it must be open to the appellant to cross-examine the police witness about the general volume of traffic, which has a bearing upon the need for a new parking place. So again about the vacant land, it must be open to the council to show that the suggested alternative site adjoins a children's hospital, and to the appellants to cross-examine the council's witnesses in the hope of establishing that (even so), access to the alternative site will involve less interference with main road traffic than access to the council's proposed parking place. Once get to this point, and the magistrates will find the case very much at large before them.

**Recovery of Maintenance Arrears**

We have again been much interested in what Mr. Leslie Pugh, clerk to the Sheffield city justices, has to say in his annual report on the subject of enforcing maintenance orders. His policy of notifying defendants, and not only complainants, when arrears are accumulating, gives satisfactory results.

The number of letters sent in 1955 shows a decrease compared with the previous year, of 45. In 1947 it was necessary to advise the parties in 26 *per cent.* of all the orders in force that arrears had been incurred but by 1955 this figure fell to 6·7 *per cent.* During the nine and a half years these letters have been issued, many defendants have paid their arrears in full and have continued to comply with their orders. Many others agreed to pay by means of instalments and are still so doing without further reminders being sent.

It is noticeable also that frequently employers at the request of an employee have deducted from wages the amount due on an order and sent it direct to the court. Such arrangements have worked most satisfactorily. Mr. Pugh is grateful for this co-operation, and believes it has been very helpful to the men concerned. It must, of course, be emphasized that it is a voluntary arrangement made at the request of the employee.

**The National Assistance Board and the Recovery of Arrears**

The National Assistance Board is sometimes criticized when it transpires that a woman whose order is very much in arrears has been in receipt of national assistance, and it is suggested that the Board ought to have seen to it that proceedings were taken earlier to enforce the arrears. In his report Mr. Pugh gives some details about the working of the system and provides some explanation which answers criticisms directed against the Board. This report states that the Board usually advises the complainant to attend court without delay. It goes on: "It has been noted that in most cases where a complainant in receipt of national assistance attends court to take proceedings for a large sum of arrears possibly amounting to several hundreds of pounds, that the delay has occurred through her own reluctance to take proceedings to enforce payment rather than any tardiness on the part of the Board. A complainant may lose sight of her husband for many years or may be working and want nothing from him, but inevitably there comes a time when increasing age or illness compels her to seek assistance and the Board may then find proceedings are required for a very large sum indeed."

**A Real Injustice**

When a court hears a case in the absence of a defendant without having any positive reason to suppose that he wishes that course to be followed there is always a danger that injustice may result. We have had our attention called to a case in which a defendant was summoned to appear before a particular magistrates' court sitting in a particular building at 10.30 *a.m.* on a stated day. His alleged offence was that of exceeding the speed limit. He duly attended. By some arrangements, the details of which we do not know, certain of the cases in the list for hearing that day were transferred for hearing in a second court *in a different building*. The defendant in question was unaware of this until 12.45 *p.m.* He went then to the other building and found on arrival there that the case had been heard in his absence and that he had been fined £5.

He appealed to quarter sessions, and that court sent the case back to the magistrates' court for re-hearing. It was stated at quarter sessions that had the defendant arrived, on the date of the original hearing, a little earlier than he did he would have heard the magistrates' clerk read out the names of those whose cases were transferred to the second court. Accepting this, the fact remains that the case was heard, without his knowledge, in a building different from that to which he was summoned, and it would seem to follow that even though the names were read out as stated steps were not taken to ascertain whether all those whose names were read out were then present to be made aware of the change. All is well that ends well, but this case does emphasize once again how easy it is unintentionally to do injustice by hearing a case in the absence of a defendant merely on proof of the service of the summons.

**The Perils of the Road**

There is no need to emphasize here the dangers of our roads today, but we read now of a new peril which faces those who seek extra comfort on their journeys by using the heaters with which so many modern cars are fitted. We are told that, particularly in heavy traffic, heaters whose air intake is close to the ground suck in the deadly carbon monoxide fumes direct from the exhausts of other cars. Drivers are warned, in heavy traffic, to switch off their heaters. The report on which we are relying states that carbon monoxide is present in large quantities in the exhaust gases from petrol engines, although little of it is found in diesel fumes. It is a dangerous gas in that it is odourless as well as being poisonous. So here is one more thing for the unfortunate motorist to remember in traffic—he must watch for the lights, watch for the policeman, watch for the zebra crossings, watch for the darting pedestrian elsewhere than on crossings and so on, and now he must remember also to switch off his heater. What a life!

**Flashing Indicators**

We have read, and heard, a number of criticisms of the flashing type of direction indicator and it does appear that some people feel strongly that it is not a satisfactory device. One criticism made of it is that it is not sufficiently standardized, and this, we think, is a criticism which merits serious consideration. The provisions about direction indicators are to be found in the second schedule to the Motor Vehicles (Construction and Use) Regulations, 1955. They occupy four pages of fairly small type.

One thing which leads to confusion is that the direction indicator may vary in colour. If it shows to front and to the rear it must be amber, if it shows only to the front it may be amber or white and if it shows to the rear only it may be amber or red. Both white and red lights are used for other purposes so that the colour does not of itself call attention to the fact that it is a light shown by a direction indicator. This can be most confusing in the case of a light showing to the rear, where a red light may be either the normal rear light, a stop light or a flashing indicator light. We do not

pretend to know all the arguments but we should be interested to hear whether there is any substantial objection to prescribing that the colour for direction indicators shall always be amber, and that that colour shall not be used for any other purpose.

Complaints are also made that some indicators are on the " roof " of the car and others in other positions. We do not think there would be so much substance in this complaint if the " colour problem " were solved, although it is true that the " fore and aft " indicators, whilst they are plainly visible to approaching traffic and to traffic completely behind, can fail to give any indication to an overtaking vehicle which is nearly alongside.

### Treasure Trove

It must be a pleasant change for a coroner to turn aside from inquests on dead bodies and to inquire into a case of treasure trove, as happened at West Hartlepool recently.

Treasure trove is defined as money, coin, gold, silver, plate or bullion, found hidden in the earth or other private place the owner thereof being unknown. In such case the treasure belongs to the Crown, and any person concealing it from the Crown is guilty of a misdemeanour, but not of larceny.

The treasure in the West Hartlepool case consisted of 16 sovereigns (worth something like £50 today) found in the pocket of a man who had been arrested for being drunk.

There were three claimants to the sovereigns, the finder who had been employed on demolition work on the site of the find, his employer, and a man who said his mother had lived in the house on the site. The jury found that the finder had concealed the sovereigns, that the owner was unknown, and therefore the finder was not entitled to have them returned or to any payment. The coroner declared the sovereigns to be treasure trove and formerly seized them on behalf of the Queen.

### Trifling Events, Important Consequences

It was the not very important fact that a man was arrested for being drunk which led to the holding of an inquest in the West Hartlepool treasure trove case. Whether the finder would or would not have reported his discovery later on is a matter of conjecture. If he had, he might possibly have received some reward.

Another trifle that led, this time, to very important results, was that a man who stubbed his toe swore, as most men do ! He was, in fact, with another man in a locked shed containing valuable merchandise at the London Docks. It was during the lunch hour that this happened when the workers were away. A policeman heard the voice, and the shed was cordoned off. The two men were arrested and at the Central Criminal Court were sentenced to two years' imprisonment for conspiracy to steal. A detective sergeant told the learned judge that investigations showed there was a much larger organization behind them with a criminal brain at the top.

That unguarded moment was unfortunate for the prisoners and their organization, but, thanks to an alert policeman, proved a timely help in the detection of crime and the course of justice.

### Temptation

Householders and shop-keepers who do not take ordinary precautions to protect their property have themselves largely to blame if they suffer loss. That does not excuse those who take advantage of opportunities to break in and steal. It may be an explanation and some mitigation of the offence, but not a satisfactory answer.

The chairman of a juvenile court reproved a shop-keeper who had left his premises insecure, there being even an opening in the back door through which entry could be gained. A number of boys raided the premises and stole a variety of articles. The chairman was quite justified in imputing blame to anyone who placed such temptation in the way of young people, but we do not go so far as the official who is reported as saying that almost any boy would have yielded to the temptation. We agree that it was unfair temptation and that there was mitigation of their offence, but we hope it is not true that almost any boy would have done the same. Admittedly, standards of honesty have slackened and parental training is often deficient, but there are surely many thousands of boys and girls to whom the sight of unguarded property is no temptation, or at least a temptation to be resisted. The dishonest are too many, but we believe they are still the minority.

It is a mistake to protest against modern methods of displaying goods, or against carelessness about premises, and leave it at that, as though the real fault lay only on that side. Boys and girls cannot be protected from opportunities of stealing and other forms of temptation throughout their lives. They need to be trained from earliest youth to withstand temptation. Then in time opportunities of dishonesty will become hardly any temptation.

### A Plea for Plain English

Magistrates in juvenile courts are not the only people who, while acknowledging the services of psychiatrists and psychologists, sometimes complain about the obscurity of the language used in their reports. This becomes a sort of jargon, some parts of which are unintelligible to ordinary people.

A newspaper has called attention to a request by the chairman of an education committee for reports to be written in plain English. He quoted from a psychiatrist's report which included the following:

" Recent advances in physics, biology, and psychology have firmly established the principles on which mental health is based. The child is considered an organized whole, a complex dynamic unit or system of energy. The unity of such a system persists in all its complexity and is destroyed by analysis.

" Further, the whole governs the activities of its members or parts . . . Personality is simply the psychological term for the structure of energy that evolves in the brain, or neural system, of the child in a social setting, in a field of human personalities. To illustrate, a child's ability to read is a function of his level of maturation, the degree of structurization of the entire personality."

### The Battle of the Bulge

But this is a bulge in the shopwindows in Nottingham. We read in the *Manchester Guardian* that several hundred pounds were spent to instal kerbside barriers in Nottingham to prevent shoppers from walking into the road amongst the traffic. One would guess that these would be most needed when traffic was heaviest and when, therefore, the shopper straying into the road would be most likely to endanger himself and cause obstruction to traffic. The report goes on to state, however, that it has now been decided to spend £450 a year so that the barriers may be removed at week-ends, *when congestion is at its worst*. They are to be replaced again each Monday when the traffic flow has eased, only to be taken down again on the following Saturday when the traffic flow again works up to its maximum. The £450 is the cost of the labour, at overtime rates where necessary, of the workmen who will do this removing and replacing.

What is the reason for this apparently strange proceeding ? It is that shopkeepers have complained that with the barriers in position they were in danger, on Saturdays, of having their windows pushed in by the crowd. It would seem, therefore, that it became a question of whether the bulge should force its way inwards through the shop windows or outwards into the traffic. It is reported that in one shop the windows could be seen to " bulge inwards with the crush."

We cite this as just one more example of the innumerable problems, involving conflicting interests, which the authorities in towns and cities have now to face in trying to keep traffic moving and, at the same time, to reduce the number of casualties on the roads. We assume that it is considered that the value of the barriers, during the less congested periods from Mondays to Fridays inclusive, will justify the expense of replacing and removing them weekly rather than removing them completely.

**Limited Disqualifications**

Once again the High Court has had to consider the question of the powers of a court under the proviso at the end of s. 6 (1) of the Road Traffic Act, 1930, " provided that, if the court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed."

The case is that of *West* v. *Jones* (1956) *The Times*, April 20. It was an appeal by the prosecution, at whose request the justices had stated a case. Justices had convicted a defendant of aiding and abetting his wife in driving a motor vehicle without there being in force the necessary insurance policy. The justices acted on the view that an aider and abettor, being " guilty of the like offence," is equally liable with the principal offender to disqualification, and they made an order disqualifying the defendant for driving, but limited their order by disqualifying him " from driving motor cars for private purposes." When one reads the proviso set out above it seems clear that this is not a limitation as to the " driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed." It purports to define the limitation according to the purpose for which the vehicle is driven. As the Lord Chief Justice said " Section 6 of the Act had nothing to do with the use of a vehicle, but only with its class or description." He added that the justices had no power to limit the disqualification in that way, and the appeal was allowed by removing the limitation so that the order was one disqualifying the defendant from driving motor cars generally.

**Cars on Recreation Grounds**

For northern newspapers a public difference of opinion between the authorities of Southwell Minster and the parish council makes good copy. It seems that on the occasion of the millenary service to be held this summer the council had more or less agreed that their recreation ground should be made available for parking some 800 cars. The council proposed a charge of 2*s*. 6*d*. which would go towards renewal of the turf, and for making good possible damage to new war memorial gates through which the cars must pass. The Provost of the Cathedral thereupon walked out of the council meeting, declaring himself " disgusted " at the proposal " to make money out of guests," though to an outsider the total of £100 does not seem excessive, to repair the expected damage. The council then offered, at a block charge of £3 2*s*., to let the Provost have space for 163 cars, which would be excluded from the playing pitches—the Provost to be responsible for all damage, for collecting litter, and for the marshalling of cars. The latest news to appear in the papers we have seen was that the Provost was considering the offer, but that parking space would propably be made available on private land, so that the recreation ground would not be used.

From the point of view of local government the interesting thing is the legality of the use suggested for the recreation ground, either for 800 cars or for the 163 which could apparently be accommodated without encroaching on the playing pitches. From the mention of ornamental gates and of turf that would be damaged, it can be inferred that the ground is not of a type specially protected by the Commons Act, 1876, or the Law of Property Act, 1925. But a parking place is a special form of public service, provided under statute (incidentally a parish council has no power to provide it). A recreation ground provided under the ordinary law cannot be diverted to some other purpose approved by the parish council, even temporarily. So far as we can see from the newspaper accounts, the chance of legal proceedings to prevent this use of the recreation ground had not occurred to either of the disputants.

Another strange story about parking in the wrong place relates to land said to be part of a common. According to a London paper, people travelling from Ashstead railway station have got into the habit of leaving cars from morning till night on a strip of Ashstead Common, between a service road and the main highway. The land is in an urban district, and the urban district council are said to be refusing to take action " because the lord of the manor has declined to dedicate to the council " (*sic*) the strip of land in question. Stated thus crudely, the reason does not seem convincing or happily expressed, but a local authority is not bound (and generally it has no *locus*) to take steps for protecting other people's property from trespass. It is however stated in the newspaper that the Residents' Association has petitioned the council to take action, in consequence of complaints about the loss of amenity suffered by people living near; even though this misuse of the land will not involve extinction of any common rights, it will effectively prevent commoners and the local public from enjoying the strip of land, and it might be thought that s. 26 (2) of the Local Government Act, 1894, had thus a bearing on the matter—at least by analogy. It is in essence comparable with the parking upon ornamental grass verges left in streets, to which we have referred on several occasions.

**More About Parking Meters**

There is no doubt that the motoring organizations are strongly opposed to the proposal to introduce parking meters in this country. Mr. Kelly, of the Automobile Association, is reported in the *Manchester Guardian* as saying that there are two approaches to the problem of traffic congestion. The one is to restrict and the other is to expand.

In the former category he places the various schemes which, to use his words, " in essence are designed to prevent motorists making full use of the streets," and parking meters are, of course, included here. The alternative, he states, is to provide fly-over crossings, underpasses and express ways and to remove notorious bottlenecks such as, to take London as an example, those in the Euston Road, Tottenham Court Road, and Notting Hill Gate. He advocates also that the authorities should provide off-street parking space above and below ground, with grants to local authorities for this purpose.

We are not sure that there is just one problem to be dealt with by one or other

of these two methods, the restrictive or the expansionist. Whatever might be possible if we were able everywhere to rebuild and replan with a view to meeting the needs of traffic now and for some years to come, we have to face the fact that in many town and city shopping areas major replanning on the scale necessary to solve the traffic problem is impossible or, at least, impracticable. It has to be admitted that, for good reason or bad, major improvements in our road system have not been given the priority that many people think they deserve and that such improvements would have done much to facilitate the flow of traffic throughout the country generally. But there would still remain the problem in central congested areas of finding sufficient space for the people who wish to park their cars without so restricting the flow of traffic as to bring it almost to a standstill. Here a short term policy is necessary to deal with the present problem, whatever it may be possible to achieve later by more ambitious and much more expensive schemes. We cannot agree that a car owner has the right to expect to be able always to find space in which to park his car whenever he wishes to do so and for however long he requires. There is only so much space available and it has either to be monopolized, free of charge, by the lucky first comer or some attempt has to be made to share, or if you prefer, to ration it. We do not know whether the parking meter would help to do this, but we should know better if we tried it.

# TREATING PROCEEDINGS AS A NULLITY

It is human to err, and even in the best run courts mistakes do sometimes happen. When such an error is discovered no one is more concerned than is the court to have the matter put right as quickly as possible, and with the minimum of trouble and expense to the parties concerned.

Our concern here is to consider whether, and if so to what extent, a magistrates' court can treat its own decision as a nullity and can proceed to the retrial of a matter which it has previously dealt with when the previous decision has not been set aside by a higher court.

There are a number of cases dealing with the subject of retrials, but some of them were decided on points which are not relevant to the matter we are considering. The first we wish to refer to is *R.* v. *Marsham, ex parte Patrick Lawrence* (1912) 76 J.P. 284. In that case a metropolitan magistrate discovered after convicting a defendant that one of the witnesses for the prosecution had not been sworn. During the same sitting and before any conviction had been drawn up the magistrate decided to rehear the case, the witness in question then being duly sworn. The defendant was convicted and it was held that the magistrate, in the exercise of his jurisdiction, was entitled to rehear the case and that as the first conviction was bad the defendant had not been twice in peril of conviction for the same offence and the second conviction was good. In the course of his judgment Lord Alverton, C.J., said "I am not going to deal with the case where a person has been acquitted on the first hearing. Very different considerations arise there." Later he said "In order to set aside the second conviction Mr. Hente must show that the magistrate did something on the previous hearing which either exhausted his jurisdiction or which made it unjust that this lady should be put validly on her trial in regard to the offence charged. In my judgment the magistrate, finding out that upon the hearing that was just concluded he had had before him evidence which was inadmissible, and that he had not heard and determined the case properly, was entitled in the exercise of his jurisdiction to have the case heard and tried before him on proper evidence."

It is to be noted that the second hearing took place here at the same sitting of the court, but it would appear that the principle which underlies the decision can equally well be applied even though the second hearing takes place on a subsequent day if the first decision has not been acted upon.

We come next to *Davis* v. *Morton* (1913) 77 J.P. 223. In this case on a charge under s. 1 of the Betting Act, 1893, the defendant, by inadvertence, was not told, before the charge was gone into, of his right to claim trial by jury. The omission was discovered during the course of the proceedings and the prosecution, with the justices' consent, thereupon withdrew the summons, in spite of a protest by the defendant's solicitor that the justices must either convict the defendant or dismiss the information. Later a second information was laid on the same grounds and in respect of the same offence. The defendant's solicitor objected on the ground that the withdrawal of the first information amounted to a dismissal, but the justices overruled the objection, heard the information and convicted the defendant. It was held that they acted rightly.

In *Bannister* v. *Clarke* (1921) 85 J.P. 12, justices, by mistake, committed a defendant for trial on charges which could only be tried summarily. The indictment was quashed at quarter sessions and subsequently fresh proceedings in respect of these charges were taken on the original information before the justices. It was held that they had jurisdiction to hear and determine these charges because their previous committal for trial of these charges was a nullity and had not exhausted the jurisdiction. The case was stated, in this instance, by quarter sessions after appeal to them from the decision in the magistrates' court, but this is immaterial from our point of view.

We refer now to *Warner* v. *Martin* (1954) C.L.R. 936. In this case a defendant was summoned for keeping two dogs, each over six months old, without a licence. The prosecution contended that the onus of proving that he held a licence or a certificate of exemption lay on the defendant, who in his turn contended that he had applied for a certificate of exemption. The justices held that the case against the defendant was not proved and dismissed the information. After this, while the court was still in session, the justices were addressed by the prosecutor who again submitted that the onus lay on the defendant to prove that he held a licence or a certificate of exemption. The justices thought that in law their power to alter their decision while still in session could be exercised only by a decision more favourable to the defendant and they adhered to their original decision. It was held, on appeal to the High Court by Case Stated, that where a Judge or magistrate gave a decision, and before it was drawn up he found it was wrong, he could alter it. The justices ought to have altered it and the case must go back to them to make a fresh decision.

In this case there was no fundamental error affecting the justices' jurisdiction, and the interesting point is that the fact that their mistake was in the defendant's favour did not prevent their correcting it. But it could not be said that the proceedings before them were a nullity. They were valid proceedings in the course of which the justices misdirected themselves on a point of law. We do not think a rehearing in such a case could properly take place on a subsequent date.

Our last case is a very recent one, *R.* v. *Appeal Committee of County of London Quarter Sessions, ex parte Rossi* [1956] 1 All E.R. 670. This was a decision of the Court of Appeal in which that Court allowed an appeal from a decision of the Divisional Court which had dismissed an application by one Rossi for an order of *certiorari* for the removal into the High Court, and the quashing there, of a decision of the appeal committee of the County of London quarter sessions.

Rossi was the defendant to a bastardy summons in a metropolitan magistrates' court. That court made no order. The complainant appealed and the hearing of the appeal was fixed for August 13, 1954. On that date Rossi attended there in person but the case was not heard because the appellant's counsel applied for an adjournment. Rossi was not then in court and the case was marked "adjourned *sine die*." After this, on the same day, Rossi, who had been all the time somewhere in the vicinity of the court, went to an official and was told that the case would not be heard that day. He was not told when it would be heard. On September 21, 1954, the clerk of the peace sent by registered letter to the appellant and to Rossi notice that the appeal would be heard on September 28. This letter was addressed to Rossi's address but was not received by him and was returned to the clerk of the peace marked "Undelivered for the reason stated. Return to sender. No response to P. 739, B. 22.9.54." This showed that when the postman, on September 22, tried to deliver the letter he got no response. Rossi's explanation, when the matter was later investigated in the High Court, was that he had been away in Kent fruit picking.

When the appeal was called on September 28, the appellant's counsel told the deputy chairman that the letter of September 21, had not been delivered but that his information was that Rossi still lived at the address and he asked that the appeal be heard in his absence. When asked why, if he lived there, the letter had come back counsel replied that Rossi was concealing himself during the day and going back there in the evenings to sleep. He called two witnesses to support what he said.

Quarter sessions decided to hear the case in Rossi's absence and they adjudged him to be the putative father of the appellant's child and ordered him to pay £1 per week towards its maintenance and £10 10*s.* costs.

The Divisional Court refused Rossi's application for *certiorari* to quash this order; Lord Goddard, C.J., saying that *certiorari* could not be granted because there had been no defect in the procedure.

We are concerned now with the judgment of Denning, L.J. in the Court of Appeal. A good deal depended on whether notice of the adjourned hearing was duly given. We are not now concerned directly with that, and we pass to the part of the judgment which we consider highly relevant to our point, and it is necessary to quote that part (at p. 675 of the report) in detail.

"I would just add this: if the order had been *regularly* obtained (as the Divisional Court thought) then I would agree that there would be no ground for *certiorari:* and Mr. Rossi's only remedy would be by application to quarter sessions to set aside the order made in his absence and to re-hear the appeal. It was suggested before us that the court of quarter sessions had no power to set aside its own orders, even when made in the absence of the respondent: but, on looking into the matter, I am satisfied that it has and that the intimation of Lord Goddard, C.J., on this point is well-founded. Suppose, for instance, that Mr. Rossi had received proper notice of the date of the hearing, but failed to attend because he was ill: and the court, not knowing of it, heard the appeal in his absence and decided against him. Or suppose that the registered letter had not been returned undelivered, so that the court were entitled to assume that it had been delivered in the ordinary course of post. In each of those cases the order of quarter sessions would be regularly obtained: but Mr. Rossi would be able to have it set aside on such terms as the court thought fit and he could be let in to defend on the merits. That was done over 250 years ago in the days of Queen Anne when Holt, C.J., was clearly of opinion that quarter sessions has just the same power as the Queen's Bench to set aside a judgment or order made in the absence of a party: *see St. Andrews, Holborn* (*Inhabitants*) v. *St. Clement Danes'* (*Inhabitants*) (1704) 2 Salk. 606: of *R.* v. *May* (1880) 5 Q.B.D. 382; *and so have inferior courts generally*" (the italics here are ours) "*see Street's Case* (1772) (7 Vin. Abr. 24 pl. 10); *R.* v. *Peters* (1758) 1 Burr 568). At one time the application to set aside had to be made during the same sessions, but that is no longer the case. Delay is a ground on which the court may in its discretion refuse relief, but it is not an absolute bar. On the other hand, if the case has been heard on its merits with both sides present, quarter sessions have of cause no power to set aside their own order: *Pudgeon's Case* (1633) Cro. Car. 341 at p. 350, *R.* v. *Glynne* (1871) L.R. 7 Q.B.D. 16). I may add that, where an order has been obtained irregularly without proper service, the quarter sessions can themselves set it aside (*see Bayley* v. *Boorne* (1720) 1 Str. 392, *Jewell* v. *Hill* (1722) 1 Str. 499; but so can the Queen's Bench by *certiorari.*"

The crux of this part of the judgment, from our point of view, is the phrase, "and so have inferior courts generally" because this phrase appears to us to make the principle apply to magistrates' courts. Of the two cases cited by Lord Justice Denning on this point we have been able to refer only to *R.* v. *Peters.* This was a case in the county court of the county of Cornwall and is, therefore, no direct authority so far as magistrates' courts are concerned.

It would seem to us that the proper conclusion to draw is that in two sets of circumstances a magistrates' court may ignore its own previous decision and retry a case which it has disposed of on a previous occasion. The first is where it comes to light after the first trial that some essential step necessary to give the court jurisdiction was not taken on that occasion, so that that trial was a nullity. The second is where the first trial took place in the absence of the defendant and the court is satisfied subsequently that his absence was due to inadvertence and that he had wished to be present to defend the case.

In the former case there has been no effective trial at all and, as the higher courts have said, the court has not in any way exhausted its jurisdiction; in the latter case there has been, by inadvertence on the court's part, combined with some action on the part of the defendant, a denial of natural justice and it is, therefore, right and proper that in both cases the court should proceed to a satisfactory trial of the matter in issue. We hope we are right in thinking that they are legally entitled to do so.

# ADDITIONS TO COMMISSIONS

## BRECON COUNTY

Gilbert Lewis Evans, Newton Farm, Brecon.

## SOUTHAMPTON BOROUGH

Edward Beal, St. Clare, 1 Leicester Road, Southampton.
Reginald Rowland Gleave, The Croft, Bassett Crescent West, Southampton.
Alan Arthur Haggar, M.B.E., 21 West Road, Woolston, Southampton.
Edward Lyman, 28 Burlington Road, Southampton.
Norman Alfred Prince, Draycott, Chilworth Road, Southampton.
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# LAW AND PRACTICE OF OBSTRUCTION

(*Continued from p. 259, ante*)

Passing from the common law background to the statute law, we proceed to examine the sections themselves, and then the cases decided upon them—a process which will, we think, demonstrate the confusion into which the law has fallen, where even Judges have time and again referred to decisions upon sections not before them, and done so sometimes without noticing a significant difference in the language used by Parliament. Where proceedings are contemplated, and when proceedings have been launched, it is essential both to the defence and to the prosecution (as we said earlier in this article) to notice precisely what each statute says, as can be seen in our note at p. 152, *ante*, referring to *Shears* v. *Matthews* [1948] 2 All E.R. 1064; 113 J.P. 36, and *Watson* v. *Lome* [1950] 1 All E.R. 100; 114 J.P. 85.

Section 72 of the Act of 1835 contains several enactments. The last makes it an offence in any way wilfully to obstruct the free passage of a highway. This is not limited to obstruction by a vehicle, nor does it mention obstruction of a person. Some of the earlier offences in the section are more particularly stated. Three of them are linked at the beginning and are worth special notice here, *viz.*, the enactments which say there is an offence; "If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers, or shall wilfully . . . drive any . . . carriage of any description . . . upon any such footpath or causeway . . . or shall wilfully obstruct the passage of any footway." In *Back* v. *Holmes* (1887) 51 J.P. 693, a metropolitan magistrate doubted whether proceedings for wilful obstruction of a footway could be taken under this section otherwise than by the highway authority. The proceedings had been taken by a police inspector, and A. L. Smith, J., in sending the case back to the magistrate, said that any person could have prosecuted. We commend this to the notice of the reader of this article, next time he is forced to risk his safety by walking in the carriageway because cars are parked on the footway, in the illegal manner now apparently encouraged by the metropolitan police, or when clothes are torn or soiled in squeezing between such cars and an adjacent wall. Section 78 of the same Act makes it an offence for a person in any manner wilfully to prevent any other person from passing him upon a highway or from passing any vehicle under his care upon the highway, and also by negligence or misbehaviour to obstruct the free passage of any person or vehicle on the highway. Here again, the obstruction need not always be caused by a vehicle, but the essence of the offence is that a person or vehicle shall have been obstructed. Section 28 of the Town Police Clauses Act, 1847, makes it an offence (by obstructing the street) wilfully to prevent any person or carriage from passing, or by means of any vehicle wilfully to cause any obstruction in any public thoroughfare. Once more the offence can be committed either with a vehicle or otherwise, and both aspects of obstruction are dealt with, that is to say preventing a person or carriage from passing, and causing an obstruction in a public thoroughfare even though no person or vehicle be actually prevented from passing. This section also deals with leaving public carriages and goods vehicles longer than is necessary for loading and unloading goods or taking up or setting down passengers, but we shall not discuss this part of it in the present article.

If the information has been laid under the Motor Vehicles (Construction and Use) Regulations, 1955, a fresh line of thought is introduced. The relevant provision of this order does not, like the decision in *Gill* v. *Carson and Nield*, *infra*, say anything about what is reasonable but it does speak of what is necessary. That is, it makes unnecessary obstruction an offence, so that there is room for ingenuity in arguing about the word "unnecessary": *see per* Lord Goddard, C.J., in *Solomon* v. *Burbridge*, *The Times*, January 27, 1956, and note also that the word "wilfully" does not occur in this enactment. It seems apt, therefore, to catch a driver whose car has broken down, if he leaves it an unnecessary time.

On a different subject, the court had to consider in *Durbridge* v. *Sanderson* [1955] 3 All E.R. 154, whether the adverb "necessarily" was to be understood subjectively or objectively. Applying this consideration to obstruction, one may find a motorist who has had no food that day contending that it is necessary for him to leave his car outside an eating house beside the road, because there is no other eating house available and nowhere else to park his car: *cf.* the case noticed under the heading "An Inconsiderate Motorist" at p. 51, *ante*, where it is interesting to compare the motorist's conduct with that of the wagoner's in *Gill* v. *Carson and Nield*, *infra*. This is indeed the common contention of so many motorists; that the car must be left somewhere. But is it what the regulation means? The person who is prevented from passing (as in the old Acts) or from bringing an invalid to his own front door, as was related by a peer in the debate on the Road Traffic Bill on February 18, 1955 (*Hansard*, col. 11) may well say that the motorist's need for obtaining food, or the woman driver's need to go shopping in P.P. 9 at p. 174, *ante*, does not create a necessity to obstruct the use by other people of the highway. So far as we can find, the meaning of an "unnecessary" obstruction in this enactment, which has now been in force for more than fifty years, remains to be determined, and perhaps it cannot be determined otherwise than on the facts of every case—though Lord Goddard, C.J., in the case we noticed at p. 98, *ante*, pointed out that the word embodied an essential ingredient of the offence. We feel sure the Local Government Board when they made the original order creating the offence were not thinking of the motorist's subjective requirements, but of "necessity" arising from such causes as mechanical failure. They may well have had in mind such an instance as the wheel of an omnibus in Sir George Jessel's judgment in *Original Hartlepool Collieries Co.* v. *Gibb*, *supra*; recognizing that motor cars were new and fallible, they gave the owner or driver an excuse where he could not move his car till necessary work was done. Necessity may also cover such other instances as Jessel, M.R., gave: the setting down and picking up of passengers, the delivery of goods, perhaps the waiting while some piece of business is transacted, this last however being purely a matter of what is objectively necessary in the particular case. The Board could not have intended, in 1904, to give a motorist permission to leave his car in the highway (still less, to leave it obstructing access to another person's premises) for a whole day or a substantial part—however convenient this may be for the motorist, and "necessary" to him in his own opinion.

This provision of the Board's order of 1904, now re-enacted as reg. 89 in the Motor Vehicles (Construction and Use) Regulations, 1955, S.I. 1955, No. 482, is a curious enactment constitutionally, apart from any question of its subjective or objective interpretation. It supplies also an example of the patchy methods

followed in England of enacting and administering the law. It has stood parallel with ss. 72 and 78 of the Highway Act, 1835, since the original Motor Cars (Use and Construction) Order, 1904, was made by the Local Government Board on the passing of the Motor Car Act, 1902. That Order, like the Regulations of 1955 (with the words inverted in the title) was concerned primarily with construction; other requirements about use were linked with construction, as reg. 73 now forbids the person in charge of a motor vehicle to use it when the mechanism is not in accordance with the constructional requirements. Regulation 89 is, on the face of it, concerned with something remote from construction: it imposes a prohibition, whether the car be well or ill constructed and maintained. We have however called it a curious enactment for another reason. It was a doctrine of the Local Government Board that, when Parliament had itself dealt with a topic, subordinate legislation ought not to cover the same ground. The constitutional basis of this doctrine is all the stronger where Parliament has fixed (say) a penalty of 40*s*. as in s. 78 of the Act of 1835. So long as Parliament considers 40*s*. a sufficient penalty for obstruction of the highway, is it proper for a subordinate instrument to say that £5 (or £20 as in reg. 104, or as the case may be) shall be the penalty for that offence, merely because the offence is committed with one type of vehicle rather than another ? Yet in this instance, where Parliament had appointed a penalty not more than 40*s*. for obstruction of the highway in 1835, by whatever type of vehicle, the Board said the penalty for " unnecessary " obstruction by a motor vehicle could be 10 times as high, and this anomaly has persisted to the present day. Is the clue to be found in the adjective " unnecessary "? This may be so, although we cannot help suspecting that the origin of the provision in the order was less subtle. The Board had to provide for a new species of vehicle which Parliament was now setting free, after having for a generation subjected these vehicles in the interest of public safety to restrictions more drastic and hampering than those of the Highway Act, 1835. The Board may well have considered it expedient and constitutionally proper to introduce a fresh safeguard and a heavier penalty, as a set-off to new freedom. Whatever the precise reason for its introduction, the provision which is now reg. 89 has stood for half a century without being upset as *ultra vires* or as beyond the proper scope of regulations, and it is too late to challenge it on that ground now.

But what is the meaning (and object) of the language ? What, if anything, was added to or subtracted from the law when the word " unnecessary " was introduced ? Parliament had already made it an offence to obstruct the highway at all, and in 1904, when the provision we are considering was first enacted, *Gill* v. *Carson and Nield* (1917) 81 J.P. 250, was in the future. It would still have been possible in 1902 to argue that in the prohibition of obstruction the Act of 1835 meant what it said.

*Gill* v. *Carson and Nield*, *supra*, is commonly quoted as if it decided a great deal, but the actual decision was given on the facts of an unusual case; or rather, on facts which were in themselves quite ordinary, but would usually not have been the occasion of a prosecution. Nevertheless, because of its frequent mention, and because the Divisional Court discussed earlier cases, it is worth examining in detail.

The drivers of two two-horsed wagons had left the wagons in the highway outside a refreshment house while they had a meal and the horses were baited—quite a common occurrence. The road was wide; it had a carriageway of 75 *ft*., but in this was a double tram line, and a vehicle passing the stationary wagons would have to draw on to the tram line, thus holding up any passing tram. On these facts, the police prosecuted under s. 28 of the Act of 1847 for obstruction, and obtained a conviction, although it seems from the report of the proceedings in the Divisional Court that no tram came along while the wagons were standing. They stood, in fact, for less than 10 minutes. One account said five minutes. Inasmuch as the prosecution could not prove that any person was obstructed in fact, there is revealed a latent ambiguity. Does s. 28 forbid obstruction of persons, or does it intend to forbid obstruction in the void—of a strip of ground, that is to say, empty at the moment, being a strip over which all persons have the right of passing and repassing ? Many a reader of this article will have said to a friend from time to time: " You can leave your car (or dogcart, or perambulator) outside; it won't be in anybody's way," and this although " outside " was upon the highway. This was the first point dealt with in *Gill* v. *Carson and Nield*, *supra*, and the main point for which the case is cited in the text books: the court held that the reference to " obstruction " in s. 28 did not involve proving that any person was obstructed. In other words, the section prohibits an abstract obstruction, if the phrase may be excused.

Having got so far, the Divisional Court went off upon the opposite tack and held that the defendants ought not to have been convicted because they were not doing anything unreasonable in the circumstances. Now this may have been a sound reason to give the defendants, in the language of today, an absolute discharge; or (in 1917) to find the charge proved but to deal with the defendants by dismissing the charge under s. 1 of the Probation of Offenders Act, 1908, or to let them go with a nominal fine. But did the reasonableness of the defendants' behaviour justify acquittal, under a statute which said nothing about reasonableness, and made mere obstruction an offence, where it is wilful—an adjective declared in *Fearnley* v. *Ormsby* (1879) 43 J.P. 384, to mean the same as "purposely," and more amply explained in *Re Young and Herston's Contract* (1885) 31 Ch.D. 175, to mean that the person of whose conduct it is predicated " knows what he is doing, and intends to do what he is doing, and is a free agent." The two wagoners obviously knew that their wagons were standing in a main road, at a spot where the tram would be held up, if another vehicle had to pass the wagons at the time when the tram arrived. It may be that the Divisional Court headed by Lord Reading reached a sensible conclusion on the facts, but as a matter of law did they not insert (in effect) the adverb " unreasonably " into s. 28 of the Act of 1847, where Parliament had not inserted it ? There is not much point in arguing today about the law of this decision, but in the much more congested conditions of all urban roads it is important to remember the facts on which the court reached the decision: especially the very short time occupied in watering the horses and obtaining a quick snack for the men. It is instructive to compare *Phythian* v. *Baxendale* (1895) 59 J.P. 217. The facts of the two cases were not unlike, but in the earlier case the defendant instead of being charged under s. 28 of the Town Police Clauses Act, 1847, or under the words in s. 78 of the Highway Act, 1835, which relate to obstruction, had been charged under a part of s. 78 which enacts, amongst other things, that the driver of a carriage commits an offence if he is at such a distance from it, when passing upon a highway, that he cannot have the direction and government of the horses. It was indeed proved and admitted before the magistrates (and the Case Stated said so) that there had been no obstruction, but this was not the point. The defendant had left his two-horsed wagon for 10 minutes in the road, while he went to a public house (possibly not further than the doorway: the magistrates were not sure whether he entered) for food. The defence put forward before the magistrates was that, by reason of the word " passing " in the above quoted portion of the section, the offence did not arise if the horses and vehicle were standing still, a defence of which Cave, J., remarked: " It only shows what justices have

to suffer from in the way of advocacy." (Having quoted this, we cannot resist the temptation of contrasting *Shears* v. *Matthews* [1948] 2 All E.R. 1064; 113 J.P. 36, under the opening words of the same paragraph in s. 78; *see* 113 J.P.N. 345, and p. 152, *ante*). In *Phythian* v. *Baxendale* the magistrates took the view that the enactment before them was designed to safeguard the public against such a danger as a runaway horse, and convicted; they were upheld by the Divisional Court. It is interesting to consider what might have been the result had Carson and Nield, 22 years later, been charged with the same offence. True, they were away from their wagons and horses for perhaps a few minutes less than 10, and their horses were being watered by an ostler, but they themselves had for the time being abandoned personal " direction and government."

Amongst other cases on the sections we have set out earlier, we next take *Dunn* v. *Holt* (1904) 68 J.P. 271, which we mentioned incidentally near the beginning of this article. It was not the earliest of such cases, but it was evidently regarded as important, being argued on both sides in the Divisional Court by leaders, Danckwerts, K.C., for the defendant trader, and Macmorran, K.C., for the prosecution. Section 54 of the Metropolitan Police Act, 1839, enacts that an offence is, *inter alia*, committed by:

" (6) Every person who shall in any thoroughfare or public place cause any cart, carriage, sledge, truck or barrow with or without horses to stand longer than may be necessary for loading or unloading or for taking up and setting down passengers [with an exception for cabs on a rank] or who by means of any cart, carriage, sledge, truck or barrow, or any horse or other animal, shall wilfully interrupt any public crossing or wilfully cause any obstruction in any thoroughfare."

*(To be concluded.)*

# FURTHER ODDMENTS FROM THE J.P.

*By* THE REV. W. J. BOLT, B.A., LL.M.

A reader in 1845 was so appalled by the extent of perjury in the land that he indited a letter to the "J.P." exploring possibilities of deepening the general appreciation of truthfulness. A few paragraphs of his letter at p. 607, deserve quotation.

" Gentlemen: It frequently happens that justice is defeated in consequence of witnesses not having been taught the nature of an oath in courts of justice. The increasing cases of assault upon young girls, and the frequency of children being called upon to give evidence in prosecutions for murders and other felonies and misdemeanours, render it desirable that a formula should be prepared and published by authority, explanatory of the nature and obligation of the oath taken by witnesses, to be taught to children, by parents and in all schools. Until such formula be prepared, it is suggested that an exposition of the oath should be promulgated by the clergy in every parish for the instruction of children of all classes. Perhaps the following exposition might be made useful. Q. What is an oath in a court of justice? A. An oath is a religious act, in which God is reverentially solicited to notice the truth of what we say. Q. How shall we be punished if we swear falsely in a court of justice? A. We may be punished by the laws of England, by fine and imprisonment or by transportation, and we must expect from its being a great crime that God will punish us here and hereafter, according to His Divine wisdom and justice."

A strange legal institution emerges into the daylight from a query at 1846, p. 44. " Militia; ballotted men; exemption. It appears to be in contemplation to have a militia of ballotted men. I will feel obliged if you will inform me whether a man having more than one child born in wedlock, who is not worth £100, is exempt from the ballot and under what authority, by statute, by cases, or by decisions? I see by the 42 Geo. III, c. 90, s. 53, persons under 5 *ft.* 4 *in.* high and also unfit, if they are not worth £100, are exempt, and by the 43rd section any poor person who has more than one child born in wedlock is exempt. And I also know it has been the invariable practice in these parts, at least on former ballots, that if such would prove on oath that they were not worth £100, they were exempted, but I am at a loss to find the authority for it. An Original Subscriber." " The matter stands as our correspondent has put it. As to the supposed exemption, arising from being worth the precise sum of £100 in the case of a poor person with more than one child, there is no such law. The not being worth more than £100 might have been made the test of a man's poverty, therefore he was asked in some districts whether, after all his debts were paid, he was worth £100, and upon his swearing in the negative or affirmative, he was discharged or enrolled accordingly."

A case reminiscent of Anthony Trollope is summarized at 1846, p. 54. " Bail court. *Ex p.* J. Humphries. *Mandamus*; rule *nisi* for a *mandamus* to the Dean and Chapter of Chester to restore a chorister to his office. Welsby moved for a rule for a *mandamus*, to be directed to the Dean and Chapter of the Cathedral Church of Chester, directing them to restore Mr. Humphries to the office of chorister in the said cathedral. It appeared that the number of choristers is six, and that this person was appointed in the year 1837, and retained his office until September, 1845; when he was dismissed, no charge having been made against him and without calling on him to make any defence, or show cause against his dismissal, he merely having been informed that since the alterations in the cathedral, his voice would not be sufficient. It was now shown by affidavit that the office of chorister was for life and paid for out of the revenues of the cathedral, that it was a freehold for life, and as such, conferred on Mr. Humphries a parliamentary vote, that his vote, together with those of the other choristers who claimed in the same way, had been contested on two occasions before the revising barrister and allowed, the prosecutor, who attended to support the votes declaring that there was no power to remove except for immorality, and that no instance of removal had ever occurred, and moreover, that the loss of the chorister's voice did not affect his office. Mr. Humphries had attended since his dismissal to perform his duties, but had been prevented. Rule *Nisi*."

One of the most sordid revelations in the " J.P." of nineteenth century conditions appears in 1846, at p. 82. That page records a debate in the House of Commons on the " employment of paupers in pounding or grinding or otherwise breaking bones or in preparing bone dust," and the editor adds his scathing comments on the horror. The Return made to Parliament showed that " this intolerable nuisance and cruelty was carried out in nearly 200 unions of the country."

There is an echo of the intensity of political partisanship in the " hungry forties " in a case reported in 1846, at p. 89.

" Queen's Bench. *R.* v. *Lynes*. Indictment; *certiorari* to remove for political prejudice. Shea, sergeant, applied to the court for a writ of *certiorari* to remove into this Court an indictment which had been found at the last Assizes for the county

of Buckingham against one William Lynes for perjury upon the ground that there was no chance of the defendant having a fair trial in the county of Buckingham, for the following reasons. The gentleman who would in all probability be sheriff at the time of the trial and who would in consequence have the power of selecting jurymen by whom he would be tried, was a person of the name of James, who entertained great prejudice against him. The defendant was moreover a strong Liberal in politics, and a violent Dissenter, and had rendered himself very obnoxious to the nobility, gentry, and clergy of the county, by his Radical principles and resolute opposition to church rates. He was, moreover, a great advocate of the total repeal of the corn laws, and had been employed by the Anti-Corn-Law League to protect their interests in the registration courts. In the discharge of his duty to this association, he had objected to upwards of a thousand votes which had never been questioned before. All these things had aroused very vindictive feelings against him, and many threats of personal violence had been indulged in. Buckingham was by no means a large county, and it was remarkable for its peculiarly conservative principles. Under these circumstances, he could scarcely hope to have his case submitted in Buckinghamshire to the consideration of an unprejudiced jury.

" Williams, J. I think I should be paying a very poor compliment to the freeholders of the county of Buckingham, if I were to assume that a man would not have a fair trial in that county by reason of his political opinions. I utterly disbelieve the statement that is made in this case that a jury cannot be found for the county of Buckingham who will act with equal justice between the Crown and the prisoner. The defendant may entertain extreme opinions or he may not, but I am quite sure this will not affect the fairness of his trial. On one point, at any rate, he may make himself quite easy—he will not have upon his trial either nobility, gentry, or clergy. Rule refused."

In parts of the world, the slave trade was still rampant in the middle of the nineteenth century, and a sinister reminder that the process of suppression was slow, appears in a report in 1846, at p. 134. The trial of " *R.* v. *Serva and Others* " was remitted from the Assizes at Exeter to the Court of Crown Cases Reserved, where it was heard before 15 Judges. The headnote reads, " By a convention between England and the Emperor of Brazil, the slave trade was declared to be piracy, and powers were mutually accorded for the visitation and capture of the vessels of either nation when so engaged, but subject to certain conditions. Held, that these conditions must be scrupulously adhered to, in order to give validity to the seizure of vessels under such convention, and that where a capture has taken place which is not attended by all the formalities required by the convention, if the crew of the captured vessel rise upon their captor and kill him, they cannot be made amenable to the laws of England."

Nineteenth-century readers regularly consulted the journal about lurid types of criminal conduct which do not come within its purview today. A choice example appears in 1846, at p. 156.

" Drugs; administering; remedy. A, B, and C meet together at a beershop in the town of L, and after drinking some time, B and C leave A in the beershop and obtain some croton oil or other noisome drug from D, a druggist in the town, and on their return, administer it to A, by way of ' lark,' in a glass of beer. Shortly afterwards, A goes home and is taken dangerously ill, and so continues for some days, but eventually recovers. Your opinion is requested (1) whether B and C can be summarily convicted under 9 Geo. IV, c. 3, s. 27, or, if not, what remedy has A for the ill-treatment he has received, the consequent injuries he has suffered, and the expense he has incurred in medicine, attendance, etc. (2) What remedy has he against D the druggist, who was aware with what purpose the drug was obtained, and has since written to A wishing him to say nothing about it? Do any of the modern statutes meet the case? Or in what way can the grievance be remedied? A Subscriber." " It was held in *R.* v. *Button*, 3 C. and P. 860, that if a person put a deleterious drug into coffee in order that another may take it, it is, if the coffee be taken, an assault upon the person who takes it. This was held under the common law and will equally apply, we think, to the statute. (2) In misdemeanours, accessories before the fact are considered as principals, and we think the apothecary is liable to be convicted of the assault like B and C. They would all be indictable at common law, and the statute 9 Geo. IV, c. 31, s. 27, is substituted for the common law."

An inquiry in 1846, at p. 154, contains a vestige of learning long since lost. " Forest Measure; What it is. In or about the year 1640, division of the commons or waste land was made between the king and the freeholders. Maps of this division laid down what is termed ' forest measure.' What proportion does this ' forest measure ' bear to the present statute acre? If this can be correctly ascertained, it may prevent a dispute respecting the boundaries of two adjoining townships. A Parish Officer." " We cannot find that one forest measure prevails throughout England and Wales. The acre is regulated by the dimensions of the perch which vary, we believe, in the several forests of England. In Sherwood forest, the perch is 20 *ft.*, the foot there being 18 *in.* If our correspondent refers to commons or wastes near any one of the present subsisting forests, or near to a place where a forest formerly subsisted, he should ascertain what the measure there was. Forty perches in length and four in breadth make an acre, but then the forest perch must be ascertained."

Altruistic activities of the period are reflected in a question in 1846, at p. 45. " Hawkers and pedlars: Selling for church. Is a lady required to take out a pedlars' and hawkers' licence for selling work done and sold only for the benefit of missionaries, repairing and building churches, and the poor in general? The two children who sell, though living at her house during the time they go round for her, only sleep at home, and one is constantly at her house, and they both assist in making the goods for sale."

Many years must have passed since " Practical Points " last had to cope with an inquiry about sheriffs. Early readers were curious about the qualifications, and could, as at 1845, p. 844, elicit informative answers.

" Sheriffs. What is the qualification for a sheriff? Must he be a resident for the county for which he is appointed? Is it necessary that he should be worth £500 in freehold property within the county; or if he has of £2 a year value in the county, and £400 or £500 a year arising from other property in another county, is he liable to serve the office of sheriff? I always understood that a sheriff must have property of a certain amount in the county, or he must be a resident in the county and be worth property of a certain amount in some other counties. A Subscriber." " Both *Impey* 11 and *Atkinson* 10 state that the property qualification is not in practice defined, and it certainly is not in law, for the statute *De Vicecomitatibus* declares only ' that none shall be sheriff except he have sufficient land within the same shire where he be sheriff, to answer the king and the people.' *Atkinson* adds, ' But this landed qualification is wholly undefined either by statute or common law.' In a note he says, ' The construction of the term " Sufficient " rests with the great officers of state and judges who have, on all occasions that I have witnessed the ceremony, allowed the plea of " no sufficient land within the county "

as an excuse of course.' He means the ceremony of nomination on the morrow of St. Martin, in the court of exchequer at Westminster. Residence is not necessary, the requisition to that effect in 4 Hen. IV, c. 5, being taken away by 3 Geo. 1 c. 15, s. 18."

The column " Parliamentary Papers " at 1846, p. 170, includes a Return of " Fees for Misdemeanours taken by clerks of the peace and clerks of Assize," and is an " abstract of all fees or payments whatsoever, taken or demanded from defendants in misdemeanour by the clerks of the peace and clerks of Assize at the last four quarter sessions and at all the Assizes which have been held in the present year; Ordered by the House of Commons."

Here are a few typical items. " Chester; Fees demanded, 16*s.*, taken 16*s.* No fees whatsoever have been demanded or taken from defendants in misdemeanour at the last four quarter sessions except the sum of 16*s.* from the inhabitants of the hundred of Macclesfield upon an indictment for not repairing a hundred bridge.

Gloucester; fees demanded, £50 18*s.* 6*d.*, fees taken, £48 15*s.* 8*d.* Most of the defendants being in indifferent circumstances, small amounts only being taken from each.

Middlesex: fees demanded, £25 0*s.* 1*d.*, fees taken, £24 3*s.* 5*d.* The clerk of the peace demands and receives on behalf of the court crier 4*d.* for taking or discharging every common recognisance, and accounts to him for the same.

Returns from clerks of Assize. Fee demanded, £58 3*s.* 8*d.* taken, £26 0*s.* 9*d.* Of these fees, about £3 were taken from individuals, and the remainder from parishes under indictments for non-repair of highways."

The perils of the highways were occasionally a grievance to readers, even in those gentle days.

A letter which is published in the 1846 volume, at p. 287, runs. " The new Highway Act. Gentlemen, Allow me to suggest that it might be useful in the new Highway Act to prohibit under a penalty the common but very dangerous practice of drying clothes within a certain distance of any highway. It is really a work of danger on a windy day to ride a spirited horse through a country village, by reason of the flapping of sheets and tablecloths on the hedges. I would also beg leave to suggest that the 94th clause, relating to the proceeding proper when a highway is out of repair, might be more defined and simplified. A Subscriber."

(*To be continued*)

# WEEKLY NOTES OF CASES

## QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Cassels and Donovan, JJ.)

### WEST *v.* JONES

April 19, 1956

*Road Traffic—Disqualification—Limitation to " driving motor cars for private purposes "—Validity—Road Traffic Act*, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 6 (1).

CASE STATED by Essex justices.

An information was preferred at a magistrates' court by the appellant, West, a police officer, charging the respondent, John James Jones, with aiding and abetting his wife in driving a motor car without a third party insurance being in force in relation to her driving, contrary to s. 35 of the Road Traffic Act, 1930. The justices convicted the respondent and disqualified him " for driving motor cars for private purposes." The appellant appealed and contended that the Act provided that disqualification could be limited only to " a class or description of vehicle."

*Held*, that the justices had no power to limit the disqualification according to the use of the vehicle. The appeal must, therefore, be allowed, and the limitation removed, so as to render the disqualification a general one.

Counsel: *F. H. Lawton* for the appellant. The respondent in person.

Solicitors: *Sharpe, Pritchard & Co.* for *D. E. Morgan*, Chelmsford.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

### BROWN AND OTHERS *v.* DIRECTOR OF PUBLIC PROSECUTIONS

April 17, 1956

*Local Authority—Borough councillor—Councillor tenant of council house—Vote on housing matter—Vote to pecuniary disadvantage of persons voting—Matter in which councillor had pecuniary interest—" Service . . . offered to the public "—Housing not a service—Local Government Act*, 1933 (23 *and* 24 *Geo.* 5, *c.* 51), *s.* 76.

CASE STATED by Northampton justices.

At Northampton magistrates' court informations were preferred by the respondent, the Director of Public Prosecutions, alleging that the appellants, John Arthur Brown and five others, who, on April 4, 1955, were members of the Northampton borough council, each being a member of the local authority and having a pecuniary interest in additional payments by council tenants in respect of lodgers and being present at a meeting of the council at which such additional payments were under consideration, voted thereon, contrary to s. 76 (1) of the Local Government Act, 1933.

By s. 76 (1) of the Local Government Act, 1933: " If a member of a local authority has any pecuniary interest, direct or indirect, in any contract . . . or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting . . . disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter: Provided that this section shall not apply to an interest in a contract or other matter which a member may have as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity, or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public."

The justices found that each of the appellants was the tenant of a council dwelling; that, of the six, three had lodgers in their dwellings; that at the meeting of the council on April 4, 1955, a resolution was moved providing that, except in the case of tenants of council dwellings who were members of the council, the requirements contained in a recommendation of the housing committee that tenants of council houses who sublet or took in a lodger or lodgers should make payments to the council in respect thereof (the " lodger's levy ") should cease to operate. An amendment was moved that the words " except in the case of tenants of council dwellings who are members of the council " be deleted from the recommendation. Each of the appellants declared his or her interest in the matter as a tenant of the council. Attention was drawn by the town clerk to the provisions of s. 76 of the Local Government Act, 1933. Each of the appellants voted against the amendment and for the resolution. The justices found that the appellants had committed an offence under s. 76 and fined each of them £2. The appellants appealed.

*Held*, (i) that the appellants had voted on a matter in which they had a pecuniary interest, and that it was immaterial whether the result of the vote would be to the pecuniary advantage or otherwise of the person voting, and (ii) that housing was not a " service . . . offered to the public " within the meaning of the proviso to s. 76, and, therefore, that the justices had come to a right decision and the appeal must be dimissed.

Counsel: *Sir Hartley Shawcross, Q.C.*, and *Miss J. Graham Hall*, for the appellants; *Sir Harry Hylton-Foster, Q.C.* (*Solicitor-General*), *Rodger Winn* and *E. H. P. G. Wrightson*, for the respondent.

Solicitors: *Parker, Thomas & Co.*, for *Max Engel & Co.*, Northampton; *Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

# MISCELLANEOUS INFORMATION

## COUNTY BOROUGH OF SOUTHEND-ON-SEA: CHIEF CONSTABLE'S REPORT FOR 1955

This is another force which found itself at the end of 1955 with fewer members than it had at the beginning. The establishment was increased during the year by five, a result of the introduction of the 44-hour week. This made the total, on December 31, 1955, 306 and the actual strength was 288. During the year there were 20 resignations and retirements and only 17 appointments. The chief constable states that it was anticipated that the pay increase in December, 1955, would have given at least a temporary impetus to recruiting, but this had not proved to be the case and very few applications have been received. For the first time the shortage has extended to women, and there were three vacancies for women constables.

The special constabulary were able to increase their numbers by 12 to reach a total of 134 at the end of the year. This satisfactory result is attributed to an intensive recruiting campaign, coupled with a crime prevention and road safety exhibition. The " specials " rendered invaluable service in the exceptionally busy traffic conditions experienced during 1955, and they are thanked for their services.

Shortage of men has led to the allocation of four light-weight motor cycles to each division to enable officers to give better cover to the outskirts of the town. The idea is not to ride the cycle constantly but to use it to get more quickly from point to point, and then to patrol on foot. It is to be hoped that the motor cycle will not disappear during the patrol. Such things do happen to police vehicles occasionally, even in the city of London.

Southend is to have a mobile police station, a converted secondhand caravan trailer. It is to be stationed, during the summer, on Marine Parade but will be available to be taken to the scene of any emergency if required.

The two members of the mounted section were used during 1955 to assist traffic control with walkie-talkie apparatus. It was found that the better field of vision which a mounted man has enabled them to achieve excellent results in the wireless control of traffic, and it is expected that this experiment will be developed.

Indictable crimes known to the police numbered 1,696, 275 fewer than in 1954. 44 *per cent.* were detected. For breaking offences alone, however, the detection rate was 59 *per cent.* This is unusual in our experience, it being generally said that breaking offences are among the most difficult to detect. Two hundred and twenty-four adults and 76 juveniles were prosecuted for crime and 47 adults and 72 juveniles were cautioned.

The report records that during the year a new approach was made to crime prevention by the holding (in conjunction with a road safety campaign) of two exhibitions, one at the Odeon Cinema and the other at the Kursaal. The crime prevention sections attracted considerable public interest and it is hoped to extend police activities in this direction in order to obtain more active co-operation from the public in making the commission of crime more difficult.

One thousand four hundred and thirty-three persons were charged with non-indictable offences, verbal warnings were given to 1,752 more, plus 256 written cautions from the chief constable, and 1,256 cards were left in vehicles indicating that a minor motoring offence had been committed, or that inconvenience had been caused to other road users. In taking proceedings the police are concentrating more on the graver offences, and we notice, for example, that prosecutions for dangerous driving have increased from 18 to 24 and for careless driving from 179 to 286, compared in each case with 1954.

The chief constable comments on the fact that it should not, in his view, always be necessary to have medical evidence to support a charge under s. 15 of the Road Traffic Act, 1930, and in fact five convictions were recorded, during 1954 and 1955, out of eight cases put before the courts without such evidence. In his view police evidence is usually the best to show a person's condition *at the actual time when the offence is said to be committed.*

## WALSALL PROBATION REPORT

As in most reports of probation committees juvenile delinquency is referred to in the 1955 report of the probation committee for the county borough of Walsall. Mr. W. R. Wheway, the chairman writes that it seems that the work of the juvenile court has now attained a steady trend as opposed to the increases of the immediate post-war years.

The subject of two year probation orders, especially for juveniles, has been discussed in *The Magistrate*, and the matter was taken up by the probation committee and the juvenile court panel. The committee commends to the benches the desirability as a general rule, of making two-year, rather than one-year, orders. It is pointed out that the probation officer concerned can always apply for an order to be discharged before the end of the full period if he or she is completely satisfied with the behaviour of the probationer in every way. Conversely, it is suggested, it is not so easy to extend an order that is too short unless there is some actual misbehaviour or breach of condition.

## WORKING PARTY ON SOCIAL WORKERS

The working party set up last year by the Minister of Health and the Secretary of State for Scotland under the chairmanship of Dr. Eileen Younghusband, C.B.E., LL.D., J.P., has now fixed October 1, 1956, as its closing date for receiving written evidence concerning the field of work, recruitment and training of social workers at all levels in the local authority health and welfare services.

Organizations and persons who intend to submit written evidence should send it to the joint secretaries of the working party, Mr. G. I. Crawford and Miss E. L. Hope Murray, at the Ministry of Health, Savile Row, London, W.1., as early as possible and in any case not later than October 1.

## LINCOLNSHIRE COMBINED PROBATION AREA REPORT

Probation officers often testify to the value of the work of the voluntary homes in which mothers who have in some way neglected their children can be trained to look after home and children adequately. In his report for 1955 Mr. J. Arundel Simpson, principal probation officer for Lincolnshire combined probation area, states that in the use of homes and hostels perhaps the most encouraging cases are the probationers who have been trained at the mother and baby homes. During the period of residence the probation officer endeavours to improve the home conditions so that the woman is able to make a completely fresh start on her return. The efforts at rehabilitation usually mean the co-ordination of the help and experience of various statutory and voluntary services.

There appears to have been considerable success in reconciliation between husbands and wives. Cases have been referred to probation officers not only by the courts, but also by clerks to justices, social agencies, police and others, but a large number were direct applications to the probation officers. There is, apparently, an increasing tendency for many people with matrimonial troubles to seek advice from probation officers without recourse to the court, and we understand that in many instances the probation officers are able to put applicants in touch with marriage guidance councils.

Probation orders showed an increase over the previous year, the increase being among adult and juvenile males. In some parts of the county, however, there has been a noticeable decrease in the work of the juvenile courts.

## CITY OF LINCOLN: CHIEF CONSTABLE'S REPORT FOR 1955

With an increase of two which was allowed in January, 1955, the authorized establishment on December, 31, 1955, was 122. As from January 17, 1956, a further increase of 11 was authorized to compensate for the introduction of the 44-hour week, which was introduced in September, 1955. Although the actual strength at the end of the year (118) was four below the then authorized establishment it was found possible to evolve a scheme to enable the 44-hour week to be put into effect as soon as it was authorized. There was a net gain in strength of seven during the year, there being five resignations which were balanced by five transfers in from other forces, so that the seven new recruits meant a real gain in strength.

As is now general throughout the country accident prevention occupied a great deal of police time in Lincoln. Nine hundred and twelve road accidents were reported during the year, an increase of 40 on the 1954 figure. The chief constable points out that although more accidents are perhaps to be expected with the rapidly increasing volume of vehicular traffic there is an increasing need for continued preventive measures. Last year the number of prosecutions for dangerous or careless driving increased to 58. The figures for the preceding four years (1951 to 1954) were 29, 23, 35, and 46 respectively. Five of the 55 offenders who were convicted in 1955 were disqualified for some period, which is undoubtedly the most effective preventive measure, and is probably much more likely to impress itself on the offender's mind than is any fine.

Continuing their efforts to educate the public on the need for, and the way to ensure, road safety the police introduced a new series of five talks in the lecture room at police headquarters to past and present

pupils of the city's schools of motoring. At these talks films on advanced driving were shown. It is recorded that the talks proved so popular and instructive that a further similar series has been arranged.

In his comments on the parking problem the chief constable notes that the council are fully alive to the need for extra accommodation and are constantly seeking new sites *near the shopping centre* for use as parking accommodation. It seems that cities and towns have nowadays to face up to the fact that to provide parking facilities some loss of ground which might otherwise be available for building purposes is inevitable to encourage business people and shoppers, who will not come if they cannot use their cars, to come there at all. The chief constable complains of the selfishness of some motorists who, by leaving their cars for longer than the permitted period in street car parks, prevent others from being able to park at all. He states that action to deal with this will be taken by police if necessary.

Six hundred and sixty-four crimes were committed in the city in 1955, 69 fewer than in 1954, and 73 *per cent.* were detected. Moreover, 71 *per cent.* of breaking offences were detected. Two hundred and one persons, including 78 juveniles, were prosecuted for crime. The 78 juveniles were responsible for 143 offences. The corresponding figures for 1954 were 61 and 120. Tables at the end of the report show that the number of juvenile offenders has fluctuated considerably over the years from 1939 to 1955 and it would appear to be difficult to draw any particular conclusion from them. The peak year was 1941, when there were 129 offenders.

There was the usual crop of insecure premises which add unnecessarily to the work of the police here as elsewhere. Police on night duty found no fewer than 1,017 such premises, and in most cases called out the key holders to make the premises secure. It seems a great pity that a charge cannot be made for such services by the police, which are rendered necessary merely because of someone's carelessness. The fact that such a charge could be made might make people more careful.

### CROYDON PROBATION REPORT

Mr. Frank Hepworth, principal probation officer for the county borough of Croydon, in his report for 1955 expresses the opinion that generally social conditions seem to have settled down to a steady level. He suggested in his previous report that war and post-war upheavals had passed, and this has become more evident. He feels that the figures relating to juvenile delinquency confirm the view that there is at present, no desperate state of moral decay in modern youth.

The report refers to the recommendations of a working party set up by the Prison Commission, dealing with after-care undertaken by probation officers, and says that the proposals should help to increase the value of this aspect of social work, the importance of which cannot be over-emphasized.

Matrimonial cases have again shown a decrease in number. The report suggests that this may be in part due to improved housing conditions. The probation officers have continued to work in conjunction with the Croydon marriage guidance council.

Reports sent to the court about boys who have been sent to the attendance centre have proved most useful.

# CORRESPONDENCE

*The Editor,*
*Justice of the Peace and*
*Local Government Review.*

DEAR SIR,

### FEUDS BETWEEN DRIVERS

My attention has been drawn to the note in your issue of March 3 last, and if it was a statement of fact then we would be wholeheartedly with you in condemning any such attitudes on the streets of London or elsewhere, as the officer responsible for the passenger workers in this Region which comprises greater London and parts of the Home Counties, where we have a membership of 60,000 some 40,000 of them being drivers.

This driver membership consists of cab drivers, bus drivers, trolley-bus drivers, Green Line and private coach drivers. I have made a check throughout our offices and branches and can find no evidence whatsoever of the existence of any feud between the various drivers. In fact, I can go further and say that at no time was there a better understanding among the professional drivers than that which exists today.

I feel that this is just two people having a row and not having the commonsense to realize that traffic conditions are very trying in these days to any road user.

I trust you will be able to give space to this as such statements if left unanswered may leave your readers to believe that the statement was correct.

Yours faithfully,
GEO. HAINES.
Trade Group Secretary.

Transport and General Workers Union,
"Woodberry,"
218 Green Lanes,
Finsbury Park, N.4.

[We are glad to be able to publish this letter. We said in commenting on the matter that we hoped that the alleged statement that there is a feud between omnibus and taxicab drivers had no foundation in fact, but the statement was reported to have been made and we thought it of sufficient importance to warrant our calling attention to it. That our doing so should have produced the letter we are now pleased to publish in our view justifies our note.—*Ed., J.P. and L.G.R.*]

*The Editor,*
*Justice of the Peace and*
*Local Government Review.*

DEAR SIR,

### OMNIBUS SHELTERS

With regard to the article on omnibus shelters contained in the February 11, 1956, edition of your publication at p. 89, you will no doubt be interested in the correspondence which I have had with the Ministry of Transport regarding this matter, copy of which I enclose.

Yours faithfully,
W. H. JONES,
Town Clerk.

Municipal Offices,
Twickenham.

*The enclosure to Mr. Jones' letter is as follows:*

To the Secretary,
Ministry of Transport.

SIR,

### LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT, 1953
### PROVISION OF BUS SHELTERS

I enclose extract from the *Justice of the Peace and Local Government Review*, February 11, 1956, on the question of the provision of omnibus shelters on sites adjoining highways not in the ownership of the highway authority or the local authority providing the shelter. From the article the inference appears to be that shelters may be placed on land of this description without paying any rental or compensation therefor, and this appears contrary to paragraph 5 of circular 47/53 dated August 11, 1953, issued by the Ministry of Housing.

I can only assume therefore that the Minister's advice has been taken out of its correct context.

I shall be pleased to have your comments.

I am, Sir,
Your obedient Servant,
W. H. JONES,
Town Clerk.

SIR,

### LOCAL GOVERNMENT (MISCELLANEOUS) PROVISIONS ACT, 1953
### PROVISION OF BUS SHELTERS

I am directed by the Minister of Transport and Civil Aviation to thank you for your letter of February 21, enclosing an extract from *Justice of the Peace and Local Government Review* of February 11, 1956, on the question of the provision of omnibus shelters on land which is in or adjacent to a highway.

The views expressed by this department are in fact put into a wrong context in this article. The Minister's views were given in relation to a question whether a landowner has the right, on the basis of the legal presumption that the owner of land adjoining a highway has rights of ownership of the soil up to the centre line of the highway, to claim an acknowledgment rent in respect of a bus shelter erected by the local authority *on land forming part of the highway.*

It would be inappropriate for the Minister to comment on the question what may be the rights of a landowner *vis-à-vis* a local authority which puts a shelter on land in his ownership which is not within a highway, but in so far as the department's letter did not distinguish between shelters within the highway and those off the highway, the letter may have been misleading, and this is regretted.

I am to add that if you should consider it desirable to bring this further correspondence to the notice of the *Justice of the Peace and Local Government Review*, such a course would be quite agreeable to this department.

I am, Sir,
Your obedient Servant,
H. SILLENDER.

Ministry of Transport.

[We are indebted to the town clerk of Twickenham, to whom this letter was addressed, and to the Ministry, for the opportunity of publishing it. The paragraph to which it refers, in our column of Miscellaneous Information at p. 89 *ante*, was based upon information published (as there stated) in one of our contemporaries, and we did not intend to suggest that a local authority acting under ss. 4 and 5 of the Act cited could place a shelter on land not forming part of the highway, without acquiring the site of the shelter under its ordinary powers or at least obtaining a licence from the owner. In effect, as the town clerk reminds us in a covering letter, the need for this was indicated in circular 47/53 dated August 11, 1953, from the Ministry of Housing and Local Government. Even when the shelter is on the highway it may be necessary not merely to bear s. 5 of the Act in mind, but also to consider the principles appearing from such cases as *Geddis* v. *Bann Reservoir, Proprietors* (1878) 3 App. Cas. 450, mentioned at p. 89, *ante*, and the more recent *Edgington* v. *Swindon Corporation* [1938] 4 All E.R. 57; 102 J.P. 473, which arose under a local Act *in pari materia*.—*Ed., J.P. and L.G.R.*]

*The Editor,*
*Justice of the Peace and*
*Local Government Review.*

DEAR SIR,

We read with interest your article at p. 194 entitled "Diversion and Inquiry," and hope you will allow us to add two very short comments on the most interesting points which you raised.

First, we continue to approve the procedure for public inquiries, subject to certain modifications, and have in fact submitted a memorandum to the Lord Chancellor's Committee on Administrative Tribunals and Inquiries, making certain recommendations in this respect.

Secondly, we respectfully disagree with your view that s. 13 (1) of the Local Government Act, 1894, does not apply to recent provisions for the closure and diversion of public paths. Curiously enough, the Society was represented on the same day at inquiries in Gloucestershire and Derbyshire, in which the parish council for each of the parishes concerned had objected to the proposals, one of which was to be effected by means of s. 49 of the Town and Country Planning Act, 1947, and the other under s. 42 of the National Parks and Access to the Countryside Act, 1949. The Society argued that the importance of the parish council's view should still be recognized, not merely from the strictly legal point of view, but also on general grounds. There is no better opportunity for a matter such as the diversion and closure (or, for that matter, the general maintenance) of public paths to be discussed than in a parish council or meeting.

At each of the two inquiries, the inspectors asked the Society's representative whether the parish council should have an absolute veto. Our representative replied that without committing the Society he thought that an unqualified veto would probably be inadvisable, and that some kind of legislation clearing up this, and one or two other allied points in both the relevant Acts, would be extremely welcome.

I am, Sir,
Your obedient Servant,
A. O. B. HARRIS,
Assistant Secretary.

Commons, Open Spaces and Footpaths Preservation Society,
11 King's Bench Walk, E.C.4.

[In the article mentioned we gave our reason for thinking that the veto given to parish councils by s. 13 of the Act of 1894 could not apply without making the new procedure meaningless. But we entirely agree that the wishes of the parish council, and indeed the wishes of every local authority concerned, should have the fullest consideration. —*Ed., J.P. and L.G.R.*]

*The Editor,*
*Justice of the Peace and*
*Local Government Review.*

DEAR SIR,

## "PROSECUTOR AS DEFENDANT"

The course taken by the chief constable of Buckinghamshire referred to in your issue of March 31, is not without precedent.

Over 50 years ago the chief constable of Torquay reported himself for having ridden a bicycle furiously. Information was laid in due course and he was convicted on his own evidence and admission. So far as I remember there was not very much press comment at the time but he achieved the distinction of having practically a whole page of *Punch* devoted to suggested parallels.

Yours faithfully,
C. W. MAYO.

Mayo & Perkins,
Solicitors,
1 Upperton Gardens,
Eastbourne.

# GLEANINGS FROM THE PRESS

*Herts Advertiser.* March 9, 1956

## SOLICITOR AND "IMPROPER OBSERVATION"

### St. Albans City Sessions Incident

*"I am entitled to ask for this case to be dismissed because it has come to the knowledge of the bench, by means of a totally inadmissable question that the defendant in this case has a previous conviction," said Mr. T. Anderson Davis, at St. Albans city sessions yesterday, when he represented William Mark Graver, of 34 Orchard Drive, Watford, who was summoned for driving a car without due care and attention. Defendant is a wholesale and retail tobacconist and confectioner with a business in St. Albans.*

*The incident arose after Inspector F. Bunn, prosecuting, had asked the defendant if he had been convicted for speeding three years ago.*

*Mr. Davis objected to "the most improper observation I have ever heard in this court." He said he had meticulously used the expression "clean licence," to show that defendant had no convictions during the past 12 months, and therefore no questions could be asked about a period previous to that time. However, he would not ask for dismissal.*

*Inspector Bunn had told the court that defendant's car was turning from Victoria Street into Alma Road, when a cyclist was struck.*

*Graver said that he had been driving for 30 years. He stopped at a pedestrian crossing to allow an old lady with a dog to cross. As soon as she crossed he put out his left trafficator and turned into Alma Road. He was not aware of any accident.*

*The chairman, Mr. W. Bird, said the bench found the case proved and imposed a fine of £3 with £2 5s. 10d. costs.*

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If a defendant charged with an offence gives evidence he does so in pursuance of the Criminal Evidence Act, 1898. Section 1 (*f*) of that Act provides that "a person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is charged, or is of bad character, unless (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecution or the witnesses for the prosecution: or (iii) he has given evidence against any other person charged with the same offence."

In this case the defendant was asked if he had a clean licence. The object of that question must have been to show that his character as a motorist was good. The prosecutor was therefore entitled to cross-examine him to show that his character was not so good.

A defendant cannot claim to be entitled to put in issue part of his character. If he puts his character in issue he puts his whole past

record in issue (*Stirland* v. *Director of Public Prosecutions* [1944] 2 All E.R. 13; 109 J.P. 1).

In *R.* v. *Winfield* [1939] 4 All E.R. 164, a prisoner, charged with indecent assault, called evidence as to his character in relation to women. The prosecution then gave evidence of his general character, which was bad. It was held that the evidence was properly admitted, since the accused by calling such evidence puts his whole character in issue. In that case, Humphreys, J., said, "There is no such thing known to our procedure as putting half your character in issue."

*News Chronicle*. March 9, 1956

### WARNING—THEN ARREST

*An accountant who failed to attend a summons was treated like a criminal, a barrister complained yesterday.*

*Said the barrister, Mr. Eric Falk, at the Mansion House: "Policemen go to his office, arrest him, place him in a police-car and take him to Cloak Lane station—and all this in full view of his neighbours."*

*The Lord Mayor said the accountant, Donald Henry Pexton, had ignored two summonses, the last one served on him personally. He was warned what might happen. "Mr. Pexton has just treated the court with contempt," he said.*

*Pexton, 53, of Cheyne Place, Chelsea, admitted leaving his car in Queen Street, Cheapside—a restricted area. He was fined* £1.

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The defendant in this case was summoned under the City of London (Miscellaneous Provisions) Regulations, 1951 (S.I. 1951, No. 1600), which prohibit waiting, loading and unloading of vehicles in specified streets except under certain conditions, under a penalty not exceeding £5.

It looks as though the defendant had not acknowledged a summons served by post and had not answered a further summons served personally. If the defendant had done that he could not complain if he was finally arrested.

Section 15 of the Magistrates' Courts Act, 1952, provides that if the summons was served on the accused within a reasonable time before the trial the court may proceed in his absence, or, if the information is substantiated on oath, issue a warrant for his arrest. The warrant may be backed for bail and the defendant may then be bailed at the police station for his appearance at the court, in accordance with the endorsement (s. 93).

The police in this case would be taking the defendant to Cloak Lane police station, either to bail him for his appearance (if the warrant was backed for bail) or to keep him there until he could be brought before the court at the Mansion House.

The Lord Mayor or an alderman of the City of London, sitting alone at the Mansion House or Guildhall Justice Room, constitute a magistrates' court, with all the powers of two or more justices (s. 121 of the Magistrates' Courts Act, 1952). The City of London courts are, however, deprived of jurisdiction in matters assigned to juvenile courts and in domestic proceedings, and their jurisdiction in those matters is transferred to metropolitan stipendiary magistrates and other justices for the County of London (s. 11 (5) of the Justices of the Peace Act, 1949, and s. 119 (3) and (6) of the Magistrates' Courts Act, 1952). By s. 11 (2) of the Justices of the Peace Act, 1949, at either of the justice rooms of the City of London the place of the Lord Mayor or alderman may be taken by the assistant Judge of the Mayor's and City of London Court or any additional Judge of that court.

# THE WEEK IN PARLIAMENT

**From Our Lobby Correspondent**

### CORPORAL PUNISHMENT

The Secretary of State for the Home Department, Major Lloyd-George, rejected a suggestion from Mr. N. Pannell (Kirkdale) that, in view of the great increase in crimes of violence since the abolition of corporal punishment, he should consider introducing legislation to restore that penalty in appropriate cases.

Major Lloyd-George said that before corporal punishment was abolished as a judicial penalty in September, 1948, the principal offences for which it could be inflicted were offences under s. 23 (1) of the Larceny Act, 1916, *i.e.*, robbery with violence, armed robbery and robbery in company with others. Since 1948, there had been a fairly steady decrease in the number of such offences known to the police.

He published in the Official Report the following totals of the number of offences against s. 23 (1) known to the police in each year since 1945 as follows:

| | | | | | |
|---|---|---|---|---|---|
| 1946 | 804 | 1951 | 633 |
| 1947 | 842 | 1952 | 790 |
| 1948 | 978 | 1953 | 754 |
| 1949 | 860 | 1954 | 604 |
| 1950 | 812 | 1955 | 578 |

Mr. Pannell then asked whether the Secretary of State was aware that, despite the decrease since 1948, the figures were still several times greater than they were before the war. Would he take into account crimes of violence generally, and particularly those of felonious and malicious wounding, which increased by 50 *per cent.* between 1948 and 1954?

Major Lloyd-George replied that many of the crimes of violence were not those for which the offender was liable to flogging before abolition. Whilst they all deplored the increase in crimes of violence since 1946, the fact remained that the figures which he published showed that although there had been a fluctuation from year to year, the trend had been on the downward side.

### CRUELTY TO CHILDREN

Mr. J. Grimond (Orkney and Shetland) asked the Secretary of State to review the law relating to cruelty to children, as at present offences against property drew heavier sentences than those against children.

Major Lloyd-George replied that s. 1 of the Children and Young Persons Act, 1933, which provided penalties for certain offences of cruelty to children would be within the terms of reference of the committee which he proposed to appoint.

Mr. Grimond said that, while he was not in general in favour of very heavy prison sentences, it appeared from newspaper reports that most brutal assaults on children drew much lighter sentences than crimes against property, or, indeed, crimes against adults.

Major Lloyd-George said he did not doubt at all that in many cases sentences were given which were far below those which could be given, but that did not show that the law itself was deficient. The committee was going to look into those matters when it was appointed.

Mr. S. Hastings (Barking) asked the Secretary of State at the same time, to give consideration to the question of the early recognition of cruelty to children, because in many cases which had come before the courts there was a record of months or even years of cruelty up to that time which had not been recognized by the authorities.

Major Lloyd-George said that, while he would certainly do that, the difficulty was that in some cases it was not always easy to get the information.

### BORSTAL INSTITUTIONS

Lieut.-Col. M. Lipton (Brixton) asked the Secretary of State how many unconvicted persons were at present detained in borstal institutions.

Major Lloyd-George replied that three persons were undergoing borstal training without having been convicted of any criminal offence.

Lieut.-Col. Lipton: "Is it not a very deplorable state of affairs that there should be even three young people in borstal who have not been convicted of or sentenced on any charge at all? How does it come about that unconvicted persons are in borstal?"

Major Lloyd-George: "It may be deplorable, but it happens to be the law. Those three young girls were sent to an approved school as the result of a probation order. They absconded from the approved school and, under the Act of 1948, were put into borstal."

# PARLIAMENTARY INTELLIGENCE

**Progress of Bills**

### HOUSE OF LORDS

Tuesday, May 24

CLEAN AIR BILL—read 2a.

Thursday, May 26

TEACHERS (SUPERANNUATION) BILL—read 2a.
SMALL LOTTERIES AND GAMING BILL—read 2a.

### HOUSE OF COMMONS

Wednesday, April 25

FINANCE (NO. 2) BILL—read 1a.

Friday, April 27

OCCASIONAL LICENCES AND YOUNG PERSONS BILL—read 3a.
SOLICITORS' AMENDMENT BILL—read 2a.

# OTHER PEOPLE'S MONEY

The presentation of the Budget, and the ensuing debate on the Money Resolutions in Committee of Ways and Means, are apt to be conducted in an atmosphere of unreality which most nations would regard as ill-suited to the practical, down-to-earth nature of the subject-matter. The Chancellor of the Exchequer is expected to follow tradition by introducing a tone of light-heartedness—almost of levity—in his opening remarks; the good-humoured laughter with which these are greeted turns all too often, after the first half-hour or so, to head-shaking, frowns, looks of consternation and cries of dissent. The Leader of the Opposition, starting with a few innocuous compliments to the ingenuity of his opponent's speech, and the manner of its presentation, soon reveals the inevitable sneer beneath the mask of urbanity which he has temporarily assumed. With the opening of the general debate the occasion develops into a free-for-all in which allegations of impropriety and objurgative epithets are hurled about, on the highest moral principles, by either side.

Press and radio enjoy a field-day of their own. The more sensational newspapers come out in a rash of headlines several inches high, and indulge in a journalese of febrile intensity; while even the normally sober organs of news, like *The Times* and the B.B.C., signalize the occasion by adopting a style which Fowler has called "the determinedly picturesque". Intelligent anticipation on the part of City editors is celebrated by an "I told you so" attitude which proves as infuriating to the reader as self-complacency invariably is; while the bad guessers in yesterday's columns are brazenly ignored or brushed aside to make room for moralizing on the vices, or the virtues, of the Administration that have brought the nation to its present pass or (as the case may be) rescued it on the brink of fresh calamities.

All this is extremely entertaining to the observer, provided that he is not individually concerned with the effects of the Resolutions, or of the ultimate Finance Act by which they will be translated into legislation for the ensuing 12 months. That grand cynic, La Rochefoucauld, has remarked that we all have enough strength to bear the misfortunes of other people; and to no institution does this aphorism apply with greater force than to the Budget. Increases in the tax on undistributed profits are a matter of supreme indifference to the man who has no surplus money to invest; the non-smoker could not care less if the excise duty on tobacco were raised 100 *per cent.* Changes in the death duties on estates of five figures and upwards are of no interest to those who enjoy no expectations of inheritance, and the purchase-tax on mechanically-propelled vehicles leaves the non-motorist undismayed. That perhaps is one reason for the air of make-believe that pervades the speeches and the reporting of the Budget Debate.

A further explanation lies in that saving grace in the Briton's character—an ability to laugh at himself, and to find humour in the most uncomfortable situations. Some will say that this is a form of escapism—a refusal to contemplate reality. It is unquestionably a British habit to close one's eyes to all dismal implications by stressing the fantastic aspect of every disaster. It is a characteristic that has seen us through some difficult and dangerous times, from the days of the Armada to those of the *Blitz*. Hence the repression of those sensations of fear, mistrust and resentment which are inevitably aroused in the public breast by announcements of further depredations on the part of authority—increased postal charges, dearer food and higher fares; hence the music-hall jokes about the income-tax and the ever-rising spiral of living costs. Hence also the Alice-in-Wonderland, mock-serious attitude to appeals for more and more savings, in face of an inflationary process which makes the real value of those savings less and less. Hence the tongue-in-cheek solemnity of arguments about the immorality of introducing a gambling element into the national finances, while horse-racing is patronized by the highest in the land, and three-quarters of the population spend their leisure filling up coupons in the football-pools, providing a colossal revenue for the Post Office and enjoying an exciting, if nebulous, prospect of tax-free prizes of fabulous amount. No politician dares make a direct attack upon so widespread an epidemic without jeopardizing thousands of votes among the constituents upon whom his seat depends; but the enunciation of high moral principle leaves practice unchecked and lulls misgivings into a comfortable complacency.

Writing in 1597, Francis Bacon aptly anticipated the conditions obtaining in a Welfare State. His Essay, *Of Seditions and Troubles*, contains some notable remarks:

> "The first remedy or prevention is to remove, by all means possible, that material cause of sedition whereof we speak, which is want and poverty in the estate. To which purpose serveth the opening and well-balancing of trade: the cherishing of manufactures; the banishing of idleness; the repressing of waste and excess by sumptuary laws; the improvement and husbanding of the soil; the regulating of prices of things vendible; the moderation of taxes and tributes; and the like . . . Above all things, good policy is to be used, that the treasures and moneys in a State be not gathered into few hands. For otherwise a State may have a great stock, and yet starve; and money is like muck, not good except it be spread."

Forty years later Crown and Parliament were involved in a quarrel which was to end in a fight to the death. *R. v. Hampden* (*The Case of Ship Money*), 1637, 3 State Trials, 826, decided that the Monarch had power to levy taxes, in times of emergency, by decree; this clear contravention of the Petition of Right was annulled by Parliament in the Statute of 1640, 16 Car. I, c. 14. The controversy was one of the main issues in the Civil War; it was finally set at rest by the Bill of Rights of 1688. The enactment that no man shall be compelled to make or yield any gift, loan, benevolence, or tax without common consent, by Act of Parliament, is now enshrined in our Constitution; faint echoes of the old clash were heard during the march of events that led to the passing of the Parliament Act of 1911, which made the Commons the sole arbiter of Money Bills. The getting in and spending of our own private earnings (if any) may seem to most of us a more intimate and pressing problem than the collection and distribution of other people's money; the House of Commons, however outwardly light-hearted their approach to the subject, have for 300 years kept a very tight hand on the public purse—a legacy of history for which we do not always evince that profound sense of gratitude which they regard as their due.

A.L.P.

# NOTICES

The N.A.P.O. is holding its forty-fourth National Conference, at The Pier Pavilion, Colwyn Bay, from Friday, May 4, to Monday, May 7, 1956.

The next court of quarter sessions for the borough of Andover will be held on Tuesday, May 15, 1956, at the Guildhall, Andover, commencing at 10.30 *a.m.*

# PRACTICAL POINTS

**All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.**

**1.—Bastardy**—*Agreement—Subsequent application for order.*

My advice has been sought on the question of taking affiliation proceedings some seven years after the execution of the deed of affiliation, on the grounds that the amount covenanted to be paid under the deed is now inadequate for the maintenance of the child having regard to the increased cost of living, and the fact that the putative father of the child will not voluntarily increase the weekly payment. It is however felt that the deed is a bar to any such proceedings, and that as there is incorporated therein a penalty clause of £50 in the event of a breach of the covenants by the mother, she might render herself liable to this penalty if such proceedings were taken.

I should welcome your observations on the matter, together with any details of stated cases on the point, if any such cases are known.

SERIDGE.

*Answer.*

An agreement, or the payment of a lump sum, is not a bar to the making or enforcement of an affiliation order, but the justices should take it into account in the exercise of their discretion, *Follit* v. *Koetzow* (1860) 24 J.P. 612; *Griffith* v. *Evans* (1882) 46 L.T. 417. As to the breach of contract by the mother *see* observations of Crompton, J., in *Follit* v. *Koetzow*, *supra*.

**2.—Customs and Excise**—*Mitigation of fine—Second conviction.*

Section 4 of the Summary Jurisdiction Act, 1879, stipulates that a court of summary jurisdiction has power to reduce the prescribed fine in respect of a first offence. It has, however, been accepted that the penalty cannot be so reduced below one fourth of the maximum when a previous offence has been proved, although not alleged in the information (*Murray* v. *Thompson* (1888) 53 J.P. 70; *see* also Inland Revenue Regulation Act, 1890, s. 35).

The purpose of this inquiry is to ask whether this statute is still in force and, in particular, applicable to proceedings taken under s. 15 of the Vehicles (Excise) Act, 1949. I have an idea that legislation to this effect is embodied in a quite recent consolidating Act. If so, can you please refer ? Some doubt has arisen as to whether, if a previous conviction is proved, the justices could now be required to impose a fine of not less than one quarter of the prescribed maximum of £20.

THE TRIO.

*Answer.*

Practically the whole of the Summary Jurisdiction Act, 1879, was repealed by the Magistrates' Courts Act, 1952, and s. 4 of the Act of 1879 was replaced by s. 27 of the Act of 1952. Under s. 4 the power of mitigating a penalty applied only in the case of a first offence, but this limitation is not re-enacted in s. 27. The Customs and Excise Act, 1952, s. 286 (2) provides that in any proceedings under the Customs or Excise Acts a court may mitigate any pecuniary penalty as it sees fit.

**3.—Land**—*Compensation for injurious affection—Housing estate.*

A council has purchased land, and proposes to build thereon 10 dwellings. The owner of adjoining land complains (*a*) that, whereas from two bedroom windows on the east side and one bathroom window on the south side of her property, she was able to look upon land, now owned by the council, on which cottages once stood, to the extent of approximately 65 *ft*., she would look at council houses which would be, at the nearest point, only 25 *ft*. away, and would be overlooked by people living in the dwellings and by people who would walk along the housing estate footpath proposed to be on the western side of the council land which is above her land; (*b*) that her property would be made more damp if dwellings were erected, although in fact the council would collect the roof water into drains discharging into a soakaway, where the land drains naturally away from her property; (*c*) that, by building dwelling-houses on land which is above her land, the council would increase the pressure of land against her house, which is built below the level of the adjoining land owned by the council, and that therefore, in due course, it might collapse. It is thought that these complaints are leading up to a claim for compensation for damage to, or depreciation of the value of, her property by the council's acts.

Would you please offer observations generally on the possibility of any such claim succeeding or otherwise.

PINGOR.

*Answer.*

It is not stated whether the land was acquired by agreement or compulsorily. If the latter, a claim might arise under s. 68 of the Lands Clauses Act, 1845, if applicable on facts. There would be no claim for compensation unless there would, but for the statutory power, be a right of action, and a claim cannot be made until the claimant's rights are injured. Compensation is not payable for anticipated damage under s. 68, as is payable under s. 63.

**4.—Licensing**—*Definition of "licensed" part of premises by metes and bounds—Whether appropriate when application made for consent to structural alterations.*

Certain licensing justices take the view that when applications for structural alterations to licensed premises come before them the exact parts of the premises (house and surrounding grounds) which the licensee wishes to have licensed should be coloured pink, the remaining portion of the premises and/or grounds being left uncoloured or coloured green. The reason the licensing justices give for their attitude is that a licensee should exclude from the premises he seeks to be licensed his own private apartments. They take the view that if the licensee's private apartments are excluded they no longer form part of the "licensed premises" (*vide* Licensing Act, 1953, s. 100) and in consequence the licensee is at liberty to entertain his guests in those private apartments with the same freedom as a private resident can entertain his guests in his private house.

The decision of the Court of Appeal in *Marshall* v. *Spicer* (1911) 75 J.P. 138, would seem to support the justices' view. It will be appreciated if I may have your comments on the licensing justices' view and the practical effect thereof.

N. IN VINO.

*Answer.*

In our opinion, licensing justices have no powers to compel a licence holder to exclude from his licensed premises any part of the premises which he proposes to occupy as his private quarters. The entertainment of his private friends at his own expense is already provided for in s. 100 (2) (*c*) of the Licensing Act, 1953, and it seems to us not to be within the province of the licensing justices to take the step which our correspondent outlines with the object of giving him this privilege. Our comment, invited by our correspondent, on the practical effect of the proposal is that it would open the door to the possibility of many abuses of licensing law and would, no doubt, be strongly opposed by the police.

On a grant of a new licence, licensing justices are empowered to define the boundaries of the licensed premises so as to restrict licensed business to specified parts of the premises (*see Stringer* v. *Huddersfield JJ.* (1875) 40 J.P. 22 ; *Commissioners of Customs and Excise* v. *Griffith* (1924) 88 J.P. 85); but para. 35 of sch. 1 to the Customs and Excise Act, 1952, defines "premises," in relation to annual value, in such terms as suggest that definition of the licensed portion by metes and bounds is not a general rule. Certainly, there is no statutory provision for a procedure such as is outlined by our correspondent.

We do not think that *Marshall* v. *Spicer* (1911) 75 J.P. 138, is strong authority in support of the licensing justices' proposal. The recent case of *Stevens* v. *Dickson* (1952) 116 J.P. 439, illustrates the general rule and one of the pitfalls likely to be encountered if there is a departure from it.

**5.—Licensing**—*Scheme to merge adjacent licensed premises into one licensed premises.*

There are two small hotels (one of 11 bedrooms and the other 19) adjoining each other in a terrace of mansions in this district. In each case there is a term licence in force, one expiring in 1957 and the other in 1958, and an instalment of monopoly value is payable on each in October, 1956. These hotels are now in the same ownership and it is desired to make one hotel of them by constructing openings in the party wall. For this purpose application is being made at the next transfer sessions for the consent of the justices to these alterations.

It is understood that counsel has suggested that when the alterations are made both licences should be surrendered in accordance with s. 7 of the Licensing Act, 1953, and a new one applied for to cover the double premises. This course has been doubted because once the alterations are made the premises of one hotel have been extended to include the other and, therefore, the new application would not be for another licence, but for one similar to that already in existence, *i.e.*, the one it is proposed to surrender, and that seems to be precluded by *R.* v. *Taylor* ; *R.* v. *Amendt* [1915] 2 K.B. 593; 79 J.P. 332, and does not come within the scope of the decision in *R.* v. *Godalming Licensing Justices, ex parte Knight and Another* [1955] 2 All E.R. 328; 119 J.P. 441.

Your advice is therefore sought on the following questions:

1. Do the proposed alterations change the identity of the premises ?

2. Assuming the licensing committee decides that although their consent would mean that one hotel would be extended to about double its size and area they are satisfied it does not change the identity of the premises, can they consent to the alterations having regard to the fact that it will take in other licensed premises while the term licence in respect of these is still in force ?

3. Is the suggestion of counsel as outlined in the second paragraph in order ? Can two term licences be surrendered for one new one under the section ?

4. Can a term licence be surrendered otherwise than in accordance with s. 7 and if so would it not be better if the application for the consent to the alterations be left until the brewster sessions when one licence could be surrendered ?

5. Alternatively, can you suggest any other procedure in the circumstances ?

N. CORAM.

*Answer.*

1. We think that it may be argued strongly that the identity of the premises will be changed by inter-communication between the two hotels inasmuch as two licensed premises will become one unified business whereby some part of each is sunk in the other.

2. While two licenses remain current, we think it unlikely that licensing justices will consent to the proposed alterations

3. We think that counsel's suggestion offers the best practical solution. More than one on-licence (whether a term licence or otherwise) may be surrendered in furtherance of a scheme for a set-off in monopoly value on the grant of a single new on-licence: *see* subs. (4) of s. 7 of the Licensing Act, 1953.

4. Except under s. 7, there is no formal way of surrendering a term licence. We agree that it is desirable to defer the application until brewster sessions when the entire scheme may be presented to the licensing justices. The grant of the one new on-licence will involve the surrender of the two existing term-licences.

5. It may be thought more regular to grant the new on-licence as a provisional grant pending completion of the alterations as shown on the plan of the premises as deposited when the new licence is applied for. If this is done, it may be considered worth-while to request the licensing justices to appoint a transfer sessions at a date conveniently after the date of the meeting of the confirming authority so as to enable the final order to be made as soon as the alterations have been completed.

**6.—Magistrates**—*Practice and procedure—Arranging additional sittings to deal with extra work.*

The magistrates for a division to which I am clerk, in October fixed the dates of the courts for the coming calendar year. They are now thinking that these dates may be insufficient as they have had a lot of work lately, and are proposing either to add one extra date per month (they only sit once a month normally) or if they cannot do this, to decide that each monthly court shall be adjourned until a fortnight afterwards. I shall be much obliged of you will let me know whether the first course can be followed and, if it cannot, will it be in order for me, if the magistrates follow the second course, to issue summonses for dates to which I expect the next court to be adjourned, although such adjournment has not in fact taken place.

J. SAGIN.

*Answer.*

There is nothing to prevent the justices arranging to sit as often as they find necessary, and they can certainly add an extra date per month if they wish.

**7.—Magistrates**—*Practice and procedure—Fixing summonses for hearing on a date to which it is anticipated that other cases may be adjourned.*

I am much obliged by your answer to my query above as to addition of extra court days to the list. The chairman of the bench has suggested an alternative idea: that the court might decide that if work renders it advisable, it will always adjourn until a certain fixed number of days after one of the court days, and that I can rely upon this being done for the purpose of issuing summonses. It appears to me that, when trying to distribute business between various days, I cannot very well issue a summons for the appearance of the defendant on the date of the proposed adjournment, relying upon the magistrates' intentions, if necessary, to adjourn a future court to such later date. I shall however, appreciate your views.

J. SAGIN AGAIN.

*Answer.*

We see no reason why a summons should not be issued for the date of an anticipated future adjournment of other cases, provided that it is understood that the court will then sit *in any event* on that date, whether any adjournment of other cases is necessary or not.

**8.—Probation**—*Compensation—Order, in respect of two charges, exceeding* £100.

A person was recently convicted by a magistrates' court on two charges of larceny involving a total amount in excess of £100. A probation order was made and the defendant ordered to pay the full amount as compensation. The question which arises is whether the extent of a court's powers to order payment of a sum not exceeding £100 for damages and compensation (*vide* s. 11 (2) of the Criminal Justice Act, 1948) applies to *each* charge, or is the limit of £100 applicable irrespective of the number of charges.

S.J.E.B.

*Answer.*

We are of opinion that if it is made clear that the offender is placed on probation in respect of each charge, the words of s. 11 (2) would justify the making of two separate further orders for compensation, in each case less than £100 but together exceeding that amount.

**9.—Road Traffic Acts**—*Provisional licence—Motorcycle with sidecar so adapted as not to be capable of carrying passenger—Driving unaccompanied.*

X is the holder of a current provisional licence and is the owner of a 500 *cc.* motorcycle combination. The combination was originally constructed for the carriage of a passenger but X has removed the seat and has enclosed the top of the sidecar by screwing sheets of wood over it. He then uses the sidecar for the carriage of personal effects. "L" plates are properly exhibited. The motorcycle of the combination is not fitted with a pillion seat. In these circumstances, if X drives the combination without any passenger does he, in your opinion, commit any offence under reg. 16 (3) (*a*) of the Motor Vehicles (Driving Licences) Regulations, 1950 ?

JURIS PRUDENCE.

*Answer.*

The sidecar has not merely been adapted, but the construction has been altered so that it can no longer be said to be constructed for the carriage of a passenger.

We are therefore of the opinion that no offence is committed under reg. 16 (3) (*a*) if X drives the vehicle without any passenger.

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